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TESTIMONIALS.

[FROM THE HON. J. THOMPSON, SECRETARY OF THE INTERIOR.]

DEPARTMENT OF THE INTERIOR,
December 14th, 1859.

W. W. LESTER, Esq.:—Dear Sir:—I am informed that you have completed, and have now ready for the press, your compilation of the Land Laws of the United States, embracing the regulations of this department, and the decisions of cases arising in the execution of them. Such a book as you propose is much needed, not only by the officers of the Government, but by all the judges, lawyers, and civil officers residing in the land States.

The arrangement of the proposed work meets my approval, and I feel satisfied from your ability and known accuracy, and your familiarity with the subject, that your work will be a complete success.

Yours, very truly,

J. THOMPSON.

[FROM THE HON. JOS. S. WILSON, COMMISSIONER OF THE GENERAL LAND OFFICE.]

WASHINGTON CITY,
October 1st, 1859.

My Dear Sir:—You apprised me some months ago of an enterprise you had under way, with a view to a complete digest and summary of the Acts of Congress, the opinions of the Attorneys-General, decisions of the Department and of the Supreme Court of the United States, all affecting our public land system, and reaching back to the year 1838, to which period there is a publication in existence. In the progress of the work, and at the present stage of its development, you have unfolded to me your plan of arrangement of divisions and sub-divisions of subjects.

First.—The disposal of the public lands by sale, internal improvements, swamp donations, &c.; the separation of foreign titles, originating under the governments of Great Britain, France, Spain and Mexico, when they held sovereignty of portions of the continent, now the territory of the Republic. Then you propose to treat of pre-emptions, swamp grants, railroads—dividing and subdividing this extensive subject in such a manner as will indicate at a glance each of them, their connection and dependence, with such references, as will bring to the mind's eye at a glance, the laws, general instructions, and the decisions, executive and judicial.

A work of this kind will be a manual of great value, not only to the land lawyer, but to our people, spread over the public domain. It will be a cheap and valuable guide to them, in presenting and asserting their rights. From your experience, judgment and general knowledge of the subject, I have no doubt you will furnish a work of great interest and value.

With my best wishes for your success, and assurance of my regard, I remain, very truly, your friend,

W. W. LESTER, Esq.

*

JOS. S. WILSON.

TESTIMONIALS.

[FROM MOSES KELLY, ESQ., CHIEF CLERK OF DEPARTMENT OF THE INTERIOR.]

WASHINGTON CITY,
October 4th, 1859.

My Dear Sir:—It gives me much pleasure to commend the manual upon which you have been so long engaged, to public favor. I do this the more cheerfully from an earnest conviction of its great value; and because I feel that you deserve to be liberally rewarded for the labor and care its preparation has cost you.

The want of this work has long been experienced. More than twenty years have elapsed since one of the kind was published, and during this long interval, the legislation disposing of the public lands, has been such as to render former publications of little practical use.

The plan you have adopted in the classification of subjects, affording a ready means of referring from the law to the leading decisions under it, will prove particularly convenient to all. By this arrangement, the officers of the Land Department will be afforded facilities for the discharge of their varied duties not before enjoyed, and those employed in the prosecution of land claims, be enabled to proceed with more certainty and directness in the preparation and presentation of their cases, to those having jurisdiction of them. At the same time, you have succeeded in producing such a work, that those who have acquired lands from the Government, by pre-emption or otherwise, may for themselves ascertain the nature and extent of their legal rights, and those who wish to do so, go forward with confidence to the accomplishment of their purpose, by consulting its pages and conforming to its directions.

In the hope that the demand for this valuable production will justify these high expectations,

I am, very truly, your friend,

W. W. Lester, Esq.

MOSES KELLY.

[FROM THE HON. S. A. SMITH, EX-COMMISSIONER OF THE GENERAL LAND OFFICE.]

GENERAL LAND OFFICE,
December 22d, 1859.

W. W. LESTER, Esq.:—Dear Sir:—Your proposed compilation of the Land Laws of the United States, embracing the Regulations of the Department and the Decisions made of Cases arising in the execution of them, meets my hearty approval. Such a work is greatly needed, and will be alike advantageous to this office, and the legal profession in general.

Respectfully, your obedient servant,

S. A. SMITH.

[FROM HON. THOS. A. HENDRICKS, EX-COMMISSIONER OF THE GENERAL LAND OFFICE.]

SHELBYVILLE, INDIANA,
March 15th, 1860.

Dear Sir:—I am pleased to observe that you have prepared, and are about to publish a work on the land system of the United States, embracing the laws, regulations and decisions. The arrangement, as presented in the circular of your publishers, is judicious, and indicates a very complete view of the subject. Your position in the Department of the Interior, has been favorable to you in the preparation of the work, and I cannot doubt it will satisfy the expectations of your friends, and the wants of the public.

Hoping that you will meet with success in your laudable enterprise,

I am, very truly yours, &c.,

W. W. Lester, Esq., Washington City.

THOS. A. HENDRICKS.

[FROM THE HON. JOHN WILSON, EX-COMMISSIONER OF THE GENERAL LAND OFFICE.]

WASHINGTON CITY,
August 27th, 1859.

Dear Sir:—I have considered with much care, the plan and arrangement of the volume you propose to publish on the public lands; and consider it the very best

TESTIMONIALS.

that can be devised. By publishing the laws passed since 1838, in chronological order, you complete Part I., Laws, Opinions, and Instructions, to date: and by a similar publication of the decisions of the Supreme, Federal, and State Courts, the opinions of the Attorneys-General, and the decisions of the Department and General Land Office, you will, in like manner, complete the second part of the work above mentioned. But by the system of references and cross-references you propose, you will combine with the foregoing, a most complete digest or syllabus of the whole land system, and supply a hiatus, which has long been felt by all legal and land men. The value of this work, prepared on the basis you propose, can hardly be appreciated, not only to the legal profession, but to every settler or land holder in the land States. Your facilities for preparing this work, are great; and your ability is fully equal to the task. With my best wishes for your success in it,

I am, truly, your friend,

W. W. Lester, Esq., Washington.

JOHN WILSON.

[FROM HON. RICHARD M. YOUNG, EX-COMMISSIONER OF THE GENERAL LAND OFFICE.]

WASHINGTON CITY,
December 3d, 1859.

Dear Sir:—I am gratified to learn that your new work entitled "Decisions in Public Land Cases, Land Laws and Regulations," will soon be ready for the press. I very much approve of the plan, and systematic arrangement of your compilation, and from your well-known capacity and experience, am satisfied it will prove to be very useful to the profession generally, but especially to attorneys and land agents in the new States and Territories, in which the public lands are situated, to whom it will be invaluable.

I take great pleasure in recommending it as a compilation which has been greatly needed, and sincerely hope that it will meet with the patronage it so well deserves.

I am, very respectfully, &c.,

RICHARD M. YOUNG,
Former Commissioner of the General Land Office.

W. W. Lester, Esq., Washington.

[FROM S. S. BAXTER, ESQ.]

WASHINGTON,
October 15th, 1859.

Mr. WM. W. LESTER:—Dear Sir:—I am much pleased to hear you are about to publish a book on the Land Laws of the United States, as administered by the Department of the Interior.

Such a book is much needed, as a guide to Registers and Receivers; and to counsel, practising before the various land offices of the United States.

But its benefits will not be confined to them. The land system of the United States is the most extensive and perfect ever known in the world. Such an amount of valuable land has never, elsewhere, been disposed of with so much regularity and accuracy.

But as this system is confined to the procurement of titles, from the first step in the titles to the grant of the patent, it has necessarily become a peculiar one, resting on Acts of Congress, interpreted and executed by the Commissioner of the General Land Office, acting under the direction of the Secretary of the Interior.

The consequence is, a general want of knowledge of the system, among persons interested in its operation.

Nearly all of our people, residing in the States and Territories in which the public lands are situated, and many residing in other States, purchase inchoate titles (viz., titles before the patent issues,) to land. To all intelligent persons interested in the public lands, such a book is necessary to enable them to understand their rights.

From specimens of your book, which I have seen, I am satisfied it will fully meet the wants of those interested in the public lands.

With great respect, yours, &c.,

S. S. BAXTER.

TESTIMONIALS.

[FROM HENRY BEARD, ESQ., OF THE INTERIOR DEPARTMENT.]

WASHINGTON CITY,
October, 5th, 1859.

My Dear Sir:—The work which you propose to publish, is, in my judgment, much needed, and will be extensively useful.

The administration of the land laws of the United States, by the Commissioner of the General Land Office, and the Secretary of the Interior, is not a plain matter of form, nor is the disposition of business wherein public and private rights are involved, a matter of discretion. The decisions of these officers, when we consider the subject-matter of them, furnish an exposition of a large body of statutes that seldom, if ever, find interpretation in judicial tribunals. Made as those decisions have been, by men who have adorned the bar and the bench, and who in the constant discharge of business involving all the body of the land laws, have become familiar with the objects and effects of all the multifarious enactments of Congress which relate to the public lands, the decisions, in point of authority cannot be ranked as inferior to any tribunal below the Supreme Court of the United States. The extent of ground they cover, the nice points of interpretation they involve, will quite surprise one not already familiar with the subject.

To intelligent persons who have purchased, or who contemplate entering public lands, or who are about to buy the titles or claims of others; to those who think of investing, or have invested, in swamp lands, railroad lands, or internal improvement or school lands, your book will afford a mass of information which could not be obtained in any attorney's office at present; and which, even on single points of advice, would cost tens, if not hundreds of dollars.

Many of the most important decisions that your book will contain, are based upon laws of recent date, and will therefore be fresh and instructive to the most learned and experienced lawyers. In view of this fact, all lawyers of extensive practice in the old States, will need to have a copy of the work: those in the new States will buy it as soon as they become aware of its publication, and contents. To land officers and their clerks, it will be an indispensable companion.

Having examined the manuscripts of your proposed publication, I can heartily commend the contents, as most valuable contributions to legal knowledge. Your opportunities for obtaining materials for the compilation, have been unequalled, and you have used them with ability, diligence and judgment.

Very respectfully, your obedient servant,

HENRY BEARD.

W. W. Lester, Esq., Washington, D. C.

[FROM S. P. YEOMANS, ESQ., REGISTER OF THE LAND OFFICE AT SIOUX CITY, IOWA.]

LAND OFFICE, SIOUX CITY,
March 5th, 1860.

W. W. LESTER, Esq.:—Sir:—I have received the prospectus of your work, now in press, upon the laws in relation to the public lands, with the regulations and decisions of the proper Departments with reference to their disposition, and beg to express my hearty approval of your plan, and my thanks to you for having availed yourself of the favorable opportunities which your position and experience afford for the preparation of a work which will tend so largely to lessen the responsibilities, diminish the labor, and render uniform the rulings of the local land officers throughout the country. During my experience of six years as Register, new questions have repeatedly arisen, growing out of railroad and swamp land grants, scrip and warrant locations, pre-emption claims, &c., the issue of which often involved heavy interests, and upon which opinions were required to be given without any aid from precedents or authority; these were rendered at the different offices, according to individual judgment, and were often erroneous and contradictory, thus leading to confusion, and a want of confidence upon the part of those interested, much to be deplored. These questions have from time to time come before the proper Departments, and upon them decisions have been made, which have the authority of law so far as the local officers are concerned; and so extended have been the land operations within the last few years, that their publication at this time in the form you propose, will be of incalculable benefit to the officers, who will make your work their text book, as well as the public, who are largely interested in all questions affecting the title to real estate.

Very respectfully,

Your obedient servant,

S. P. YEOMANS, Register.

DECISIONS

OF THE

Interior Department

IN

PUBLIC LAND CASES,

AND

LAND LAWS

PASSED BY THE CONGRESS OF THE UNITED STATES;

TOGETHER WITH THE

REGULATIONS OF THE GENERAL LAND OFFICE.

BY

W. W. LESTER,

OF THE INTERIOR DEPARTMENT, WASHINGTON D. C.,

(ATTORNEY-AT-LAW.)

PHILADELPHIA:

H. P. & R. H. SMALL,

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In the Clerk's Office of the District Court for the Eastern District of Pennsylvania.

PILE & M'ELROY, PR'S,
LODGE STREET.

TO THE

Honorable Jacob Thompson,

SIR:—

As this volume derives much of its value from your official expositions of the Land Laws, during your able administration of the Department of the Interior, I beg leave to inscribe it to you.

This dedication is made specially appropriate, from the fact that the public will find in this book abundant evidence of the purity of your character, of your legal ability, and untiring labor; while it will ever remain an incontrovertible record, that sound principles of law and strict maxims of justice have invariably guided your judgment and controlled your action, as the arbiter of private rights, and the custodian of public interests.

It is peculiarly gratifying to me, in expressing my acknowledgments for the high sanction of your authority accorded this publication, to record the profound respect and esteem which I, in common with all who are connected with your Department, entertain for your great public labors, and for your official courtesy and kindness.

With unfeigned gratitude and regard, I have the honor to be,

Your obedient servant,

W. W. LESTER.

INTRODUCTION.

THE object of the present work is to furnish officers of the Government, members of the bar, settlers on the public lands, and all who are connected in any manner with the land affairs of the United States, all the means of information necessary to a thorough comprehension of the system, as it now exists, by the publication, *in extenso*, of all the important land laws, together with the construction placed upon them by those officers of the Government charged with their administration. It contains—

1st. A selection of such of the laws of Congress, in relation to public lands, passed prior to the year 1838, as are of present application and operation. It was deemed unnecessary to give all the laws contained in Part I, of “Laws, Opinions, and Instructions,” which was published in 1838, since, for the greater part, those laws have expired or become obsolete; and since that work is still in print, and can be obtained by all professional men, who alone would be likely to require it for reference in cases which may have originated more than twenty years ago.

The selections which have been given, however, are enough to render this work complete for all practical purposes.

From the year 1838 to 1860, all the laws relating to public lands will be found in this volume.

2d. Decisions by the Secretaries of the Interior, in cases on appeal from the Commissioner of the General Land Office. These decisions contain an exposition of the land laws by the highest Executive Officer of the Government having cognizance of them, and who acts, in regard to such cases, in a *quasi* judicial capacity.

3d. The more important opinions of the Attorneys-General in full, upon questions which have arisen under the land laws.

4th. The instructions of the Commissioner of the General Land Office to Registers and Receivers, and to Surveyors-General, in regard to their duties, together with reports and notes, giving the rulings of his bureau in particular cases. And—

5th. Notes of reference to the decisions of the Supreme Court of the United States, in cases involving the exposition of land laws, giving the substance of such decisions, with references also to the opinions of the

Attorneys-General in relation to the same subject. Some of the leading decisions of State Courts are also referred to.

The work has very naturally divided itself into several "titles," or heads. Every law and official paper has been numbered; the first in the order of date, and the latter in the order of insertion. Some of the laws which were inadvertently omitted from their regular order, will be found in the Appendix. For brevity and convenience, the laws are referred to in the decisions and instructions by the numbers which have been given them.

In order to render this work as complete as possible, the editor has availed himself of the assistance and advice of several gentlemen connected with the Department, and in this connection, it is proper that he should express his grateful appreciation of the favors thus conferred.

Especial obligations are acknowledged for many important suggestions, to Moses Kelly, Esq., Chief Clerk of the Department of the Interior, to the Hon. Joseph S. Wilson, Commissioner of the General Land Office, and to Henry Beard, Esq., of the Interior Department, whose thorough knowledge of the subject rendered their advice and aid of peculiar value; likewise, to J. A. Barksdale, Esq., of the Department, and to Messrs. Jno. Hood, C. O. Joline, Thompson Allan, B. F. Slocumb, N. Vedder, H. L. Skinner, and B. F. Reilly, of the General Land Office, for very valuable assistance in respect to those branches of business of which they have charge.

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GENERAL PUBLIC ACTS OF CONGRESS

RESPECTING THE SALE AND DISPOSITION OF PUBLIC LANDS.

No. 1.—An Act providing for the sale of the lands of the United States in the Territory northwest of the river Ohio, and above the mouth of Kentucky river.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a surveyor general shall be appointed, whose duty it shall be to engage a sufficient number of skilful surveyors, as his deputies; whom he shall cause, without delay, to survey and mark the unascertained outlines of the lands lying northwest of the river Ohio, and above the mouth of the river Kentucky, in which the titles of the Indian tribes have been extinguished, and to divide the same in the manner hereinafter directed; he shall have authority to frame regulations and instructions for the government of his deputies, to administer the necessary oaths upon their appointments, and to remove them for negligence or misconduct in office.

SEC. 2. *Be it further enacted,* That the part of the said lands which has not been already conveyed by letters-patent, or divided, in pursuance of an ordinance in Congress, passed on the twentieth of May, one thousand seven hundred and eighty-five, or which has not been heretofore, and, during the present session of Congress, may not be, appropriated for satisfying military land bounties, and for other purposes, shall be divided by north and south lines, run according to the true meridian, and by others crossing them at right angles, so as to form townships of six miles square, unless where the line of the late Indian purchase, or of tracts of land heretofore surveyed or patented, or the course of navigable rivers, may render it impracticable; and then this rule shall be departed from no further than such particular circumstances may require. The corners of the townships shall be marked with progressive numbers, from the beginning; each distance of a mile between the said corners shall be also distinctly marked, with marks different from those of the corners. One half of the said townships, taking them alternately, shall be subdivided into sections, containing, as nearly as may be,

six hundred and forty acres each, by running through the same, each way, parallel lines, at the end of every two miles, and by marking a corner on each of the said lines, at the end of every mile; the sections shall be numbered respectively, beginning with the number one in the northeast section, and proceeding west and east alternately, through the township, with progressive numbers, till the thirty-sixth be completed. And it shall be the duty of the deputy surveyors, respectively, to cause to be marked on a tree near each corner made as aforesaid, and within the section, the number of such section, and over it the number of the township within which such section may be; and the said deputies shall carefully note, in their respective field books, the names of the corner trees marked, and the numbers so made. The fractional parts of townships shall be divided into sections, in manner aforesaid, and the fractions of sections shall be annexed to, and sold with, the adjacent entire sections. All lines shall be plainly marked upon trees, and measured with chains, containing two perches of sixteen feet and one half each, subdivided into twenty-five equal links, and the chain shall be adjusted to a standard to be kept for that purpose. Every surveyor shall note in his field book the true situations of all mines, salt licks, salt springs, and mill seats, which shall come to his knowledge; all water courses over which the line he runs shall pass; and also the quality of the lands. These field books shall be returned to the surveyor general, who shall therefrom cause a description of the whole lands surveyed to be made out and transmitted to the officers who may superintend the sales. He shall also cause a fair plat to be made of the townships and fractional parts of townships contained in the said lands, describing the subdivisions thereof, and the marks of the corners. This plat shall be recorded in books to be kept for that purpose; a copy thereof shall be kept open at the surveyor general's office for public information; and other copies sent to the places of the sale, and to the Secretary of the Treasury.

SEC. 3. *Be it further enacted*, That a salt spring* lying upon a creek which empties into the Sciota river, on the east side, together with as many contiguous sections as shall be equal to one township, and every other salt spring which may be discovered, together with the section of one mile square which includes it, and also four sections at the centre of every township, containing each one mile square, shall be reserved for the future disposal of the United States; but there shall be no reservations, except for salt springs, in fractional townships, where the fraction is less than three-fourths of a township.

SEC. 4. *Be it further enacted*, That whenever seven ranges of townships shall have been surveyed below the Great Miami, or between the Sciota

* This salt spring, and also those near the Muskingum river, have been given to the State of Ohio, by the act of the 30th of April, 1802. The section No. 16, which is one of the four central sections, was also, by the act of 30th April, 1802, granted to the inhabitants of every township in the State of Ohio. And by the act of the 3d of March, 1803, and of 2d of March, 1807, certain quarter townships were granted, in lieu of that section, for the use of schools, in the military tract, in the Connecticut Reserve, and in the Virginia military tract, where the section No. 16 had not originally been reserved. The same reservation of No. 16, for the use of schools, has been made in all the subsequent laws for the sale of public lands wherever situated. The reservation of the three other central sections has not been made in the Mississippi, Orleans, (now the State of Louisiana,) and Louisiana, (now Missouri) Territories, nor in any tracts of land north of the river Ohio, to which the Indian title has been extinguished subsequent to the treaty of Greenville: that is to say, from the year 1795. And the sale of those reserved sections, as well as those reserved by the ordinance of the 20th of May, 1785, is authorised by the 7th section of the act of 3d of March, 1805, and by act of 29th February, 1808.

river and the Ohio Company's purchase, or between the southern boundary of the Connecticut claims and the ranges already laid off, beginning upon the Ohio river and extending westwardly, and the plats thereof made and transmitted, in conformity to the provisions of this act, the said sections of six hundred and forty acres (excluding those hereby reserved) shall be offered for sale, at public vendue, under the direction of the Governor or Secretary of the Western Territory, and the surveyor general; such of them as lie below the Great Miami shall be sold at Cincinnati; those of them which lie between the Sciota and the Ohio Company's purchase, at Pittsburgh; and those between the Connecticut claim and the seven ranges, at Pittsburgh. And the townships remaining undivided shall be offered for sale, in the same manner, at the seat of Government of the United States, under the direction of the Secretary of the Treasury, in tracts of one-quarter of a township, lying at the corners thereof, excluding the four central sections and the other reservations before mentioned: *Provided always*, That no part of the lands directed by this act to be offered for sale shall be sold for less than two dollars per acre.*

SEC. 5. *Be it further enacted*, That the Secretary of the Treasury, after receiving the aforesaid plats, shall forthwith give notice, in one newspaper in each of the United States, and of the Territories northwest and south of the river Ohio, of the times of sale; which shall, in no case, be less than two months from the date of the notice; and the sales at the different places shall not commence within less than one month of each other. And when the Governor of the Western Territory, or Secretary of the Treasury, shall find it necessary to adjourn or suspend the sales under their direction, respectively, for more than three days at any one time, notice shall be given in the public newspapers of such suspension, and at what time the sales will recommence.

SEC. 6. *Be it further enacted*, That immediately after the passing of this act, the Secretary of the Treasury shall, in the manner hereinbefore directed, advertise for sale the lands remaining unsold in the seven ranges of townships which were surveyed in pursuance of an ordinance of Congress passed the twentieth of May, one thousand seven hundred and eighty-five, including the lands drawn for the army by the late Secretary of War, and also those heretofore sold, but not paid for; the townships which, by the said ordinance, are directed to be sold entire, shall be offered for sale at public vendue, in Philadelphia, under the direction of the Secretary of the Treasury, in quarter townships, reserving the four centre sections, according to the directions of this act. The townships which, by the said ordinance, are directed to be sold in sections, shall be offered for sale at public vendue, in Pittsburgh, under the direction of the Governor or secretary of the Western Territory, and such person as the President may specially appoint for that purpose, by sections of one mile square each, reserving the four centre sections, as aforesaid; and all fractional townships shall also be sold in sections, at Pittsburgh, in the manner and under the regulations provided by this act for the sale of fractional townships: *Provided always*, That nothing in this act shall authorize the sale of those lots which have been heretofore reserved in the townships already sold.

SEC. 7. *Be it further enacted*, That the highest bidder for any tract of land, sold by virtue of this act, shall deposit at the time of sale one twentieth part of the amount of the purchase-money; to be forfeited if a moiety of the sum bid, including the said twentieth part, is not paid, within

* This section was not carried into effect, having been superseded by the provisions of the act of 10th of May, 1800.

thirty days, to the Treasurer of the United States, or to such person as shall be appointed by the President of the United States to attend the places of sale for that purpose; and upon payment of a moiety of the purchase-money within thirty days, the purchaser shall have one year's credit for the residue;* and shall receive from the Secretary of the Treasury, or the Governor of the Western Territory, (as the case may be,) a certificate describing the land sold, the sum paid on account, the balance remaining due, the time when such balance becomes payable; and that the whole land sold will be forfeited if the said balance is not then paid; but that if it shall be duly discharged, the purchaser, or his assignee or other legal representative, shall be entitled to a patent for the said lands; and, on payment of the said balance to the Treasurer, within the specified time, and producing to the Secretary of State a receipt for the same, upon the aforesaid certificate, the President of the United States is hereby authorized to grant a patent for the lands to the said purchaser, his heirs or assigns. And all patents shall be countersigned by the Secretary of State, and recorded in his office. But if there should be a failure in any payment, the sale shall be void, all the money theretofore paid on account of the purchase shall be forfeited to the United States, and the lands thus sold shall again be disposed of, in the same manner as if a sale had never been made: *Provided nevertheless*, That should any purchaser make payment of the whole purchase-money at the time when the payment of the first moiety is directed to be made, he shall be entitled to a deduction of ten per centum on the part for which a credit is hereby directed to be given, and his patent shall be immediately issued.

SEC. 8. *Be it further enacted*, That the Secretary of the Treasury and the Governor of the Territory northwest of the river Ohio shall, respectively, cause books to be kept in which shall be regularly entered an account of the dates of all the sales made, the situation and numbers of the lots sold, the price at which each was struck off, the money deposited at the time of sale, and the dates of the certificates granted to the different purchasers. The Governor or secretary of the said Territory shall, at every suspension or adjournment, for more than three days, of the sales under their direction, transmit to the Secretary of the Treasury a copy of the said books, certified to have been duly examined and compared with the original. And all tracts sold under this act shall be noted upon the general plat, after the certificate has been granted to the purchaser.

SEC. 9. *And be it further enacted*, That all navigable rivers within the territory to be disposed of by virtue of this act shall be deemed to be and remain public highways. And that in all cases where the opposite banks of any stream, not navigable, shall belong to different persons, the stream, and the bed thereof, shall become common to both.

SEC. 10. *And be it further enacted*, That the surveyor general shall receive, for his compensation, two thousand dollars per annum: and that the President of the United States may fix the compensation of the assistant surveyors, chain-carriers, and axe-men; *Provided*, That the whole expense of surveying and marking the lines shall not exceed three dollars per mile, for every mile that shall be actually run or surveyed.

SEC. 11. *And be it further enacted*, That the following fees shall be paid, for the services to be done under this act, to the Treasurer of the United States, or to the receiver in the Western Territory, as the case may be: for each certificate for a tract containing a quarter of a township, twenty dollars; for a certificate for a tract containing six hundred and forty acres,

* The terms of credit altered by act of 10th May, 1800. The act of 24th April, 1820, abolished credit sales of lands.

six dollars ; and for each patent for a quarter of a township, twenty dollars ; for a section of six hundred and forty acres, six dollars : and the said fees shall be accounted for by the receivers, respectively.

SEC. 12. *And be it further enacted*, That the surveyor general, assistant surveyors, and chain carriers, shall, before they enter on the several duties to be performed under this act, severally take an oath or affirmation, *faithfully to perform the same*. And the person to be appointed to receive the money on sales in the Western Territory, before he shall receive any money under this act, shall give bond, with sufficient security, for the faithful discharge of his trust ; that, for receiving, safe keeping and conveying to the Treasury, the money he may receive, he shall be entitled to a compensation, to be hereafter fixed.

Approved, May 18, 1796.

NO. 2.—An Act to amend the act intituled “ An act providing for the sale of the lands of the United States in the Territory northwest of the Ohio, and above the mouth of Kentucky river.”

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the disposal of the lands of the United States directed to be sold by the act intituled “ An act providing for the sale of the lands of the United States in the Territory northwest of the Ohio, and above the mouth of Kentucky river,” there shall be four land offices established in the said Territory ; one at Cincinnati, for lands below the Little Miami, which have not heretofore been granted ; one at Chillicothe, for lands east of the Sciota, south of the lands appropriated for satisfying military bounties to the late army of the United States, and west of the fifteenth range of townships ; one at Marietta, for the lands east of the sixteenth range of townships, south of the before mentioned military lands, and south of a line drawn due west from the northwest corner of the first township of the second range, to the said military lands ; and one at Steubenville, for the lands north of the last-mentioned line, and east or north of the said military lands. Each of the said offices shall be under the direction of an officer, to be called “ the register of the land office,” who shall be appointed by the President of the United States, by and with the advice and consent of the Senate, and shall give bond to the United States, with approved security, in the sum of ten thousand dollars, for the faithful discharge of the duties of his office ; and shall reside at the place where the land office is directed to be kept.

SEC. 2. *And be it further enacted*, That it shall be the duty of the surveyor general, and he is hereby expressly enjoined, to prepare and transmit to the registers of the several land offices, before the days herein appointed for commencing sales, general plats of the lands hereby directed to be sold at the said offices, respectively, and also to forward copies of each of the said plats to the Secretary of the Treasury.

SEC. 3. *And be it further enacted*, That the surveyor general shall cause the townships west of the Muskingum, which, by the above-mentioned act, are directed to be sold in quarter townships, to be subdivided into half sections of three hundred and twenty acres each, as nearly as may be, by running parallel lines through the same from east to west, and from south to north, at the distance of one mile from each other, and marking corners, at the distance of each half mile on the lines running from east to west, and at the distance of each mile on those running from south to north, and

making the marks, notes, and descriptions, prescribed to surveyors by the above-mentioned act. And the interior lines of townships intersected by the Muskingum, and of all the townships lying east of that river, which have not been heretofore actually subdivided into sections, shall also be run and marked in the manner prescribed by the said act for running and marking the interior lines of townships directed to be sold in sections of six hundred and forty acres each. And in all cases where the exterior lines of the townships, thus to be subdivided into sections or half sections, shall exceed, or shall not extend, six miles, the excess or deficiency shall be specially noted, and added to or deducted from the western and northern ranges of sections or half sections in such township, according as the error may be in running the lines from east to west, or from south to north; the sections and half sections bounded on the northern and western lines of such townships shall be sold as containing only the quantity expressed in the returns and plats, respectively, and all others as containing the complete legal quantity. And the President of the United States shall fix the compensation of the deputy surveyors, chain-carriers, and axe-men: *Provided*, The whole expense of surveying and marking the lines shall not exceed three dollars for every mile that shall be actually run, surveyed, and marked.

SEC. 4. *And be it further enacted*, That the lands thus subdivided (excluding the sections reserved by the above-mentioned act) shall be offered for sale in sections and half sections, subdivided as before directed, at the following places and times, that is to say: those below the Little Miami shall be offered at public vendue in the town of Cincinnati, on the first Monday of April, one thousand eight hundred and one, under the direction of the register of the land office there established, and of either the Governor or secretary of the Northwestern Territory. The lands east of Sciota, south of the military lands, and west of the fifteenth range of townships, shall be offered, in like manner, for sale at Chillicothe, on the first Monday of May, one thousand eight hundred and one, under the direction of the register of the land office there established, and of either the Governor or secretary of the said Territory. The lands east of the sixteenth range of townships, south of the military lands, and west of the Muskingum, including all the townships intersected by that river, shall be offered for sale, in like manner, at Marietta, on the last Monday of May, one thousand eight hundred and one, under the direction of the Governor, or secretary, or surveyor general of the said Territory. The sales shall remain open at each place for three weeks, and no longer. The superintendents shall observe the rules and regulations of the above-mentioned act, in classing and selling fractional with entire sections, and in keeping and transmitting accounts of the sales. All lands remaining unsold, at the closing of either of the public sales, may be disposed of at private sale by the registers of these respective land offices, in the manner hereinafter prescribed; and the register of the land office at Steubenville, after the first day of July next, may proceed to sell at private sale the lands situate within the district assigned to his direction, as hereinbefore described, disposing of the same in sections, and classing fractional with entire sections, according to the provisions and regulations of the above-mentioned act, and of this act. And the register of the land office at Marietta, after the said first day of July next, may proceed to sell at private sale any of the lands within the district assigned to his direction as aforesaid, which are east of the river Muskingum, excluding the townships intersected by that river, disposing of the same in sections, and classing fractional with entire sections, as aforesaid.

SEC. 5. *And be it further enacted*, That no lands shall be sold by virtue of this act, at either public or private sale, for less than two dollars per acre, and payment may be made for the same by all purchasers, either in specie, or in evidences of the public debt of the United States, at the rates prescribed by the act intituled "An act to authorize the receipt of evidences of the public debt in payment for the lands of the United States," and shall be made in the following manner, and under the following conditions, to wit :

1. At the time of purchase, every purchaser shall, exclusively of the fees hereafter mentioned, pay six dollars for every section and three dollars for every half section he may have purchased, for surveying expenses, and deposit one-twentieth part of the amount of purchase-money, to be forfeited if within forty days one-fourth part of the purchase-money, including the said twentieth part, is not paid.

2. One-fourth part of the purchase-money shall be paid within forty days after the day of sale as aforesaid : another fourth part shall be paid within two years ; another fourth part within three years ; and another fourth part within four years, after the day of sale.

3. Interest, at the rate of six per cent. a year, from the day of sale, shall be charged upon each of the three last payments, payable as they respectively become due.

4. A discount, at the rate of eight per cent. a year, shall be allowed on any of the three last payments, which shall be paid before the same shall become due, reckoning this discount always upon the sum which would have been demandable by the United States on the day appointed for such payment.

5. If the first payment of one-fourth part of the purchase-money shall not be made within forty days after the sale, the deposit, payment, and fees, paid and made by the purchaser, shall be forfeited, and the lands shall and may, from and after the day when the payment of one-fourth part of the purchase-money should have been made, be disposed of at private sale, on the same terms and conditions, and in the same manner, as the other lands directed by this act to be disposed of at private sale : *Provided*, That the lands which shall have been sold at public sale, and which shall, on account of such failure of payment, revert to the United States, shall not be sold at private sale for a price less than the price that shall have been offered for the same at public sale.

6. If any tract shall not be completely paid for within one year after the date of the last payment, the tract shall be advertised for sale by the register of the land office within whose district it may lie, in at least five of the most public places in the said district, for at least thirty days before the time of sale. And he shall sell the same at public vendue, during the sitting of the court of quarter sessions of the county in which the land office is kept, for a price not less than the whole arrears due thereon, with the expenses of sale ; the surplus, if any, shall be returned to the original purchaser, or to his legal representative ; but if the sum due, with interest, be not bidden and paid, then the land shall revert to the United States. All moneys paid therefor shall be forfeited, and the register of the land office may proceed to dispose of the same to any purchaser, as in case of other lands, at private sale.

SEC. 6. *And be it further enacted*, That all and every the payments to be made by virtue of the preceding section shall be made either to the Treasurer of the United States, or to such person or officer as shall be appointed by the President of the United States, with the advice and consent of the Senate, receiver of public moneys for lands of the United States,

at each of the places, respectively, where the public and private sales of the said lands are to be made ; and the said receiver of public moneys shall, before he enters upon the duties of his office, give bond, with approved security, in the sum of ten thousand dollars, for the faithful discharge of his trust ; and it shall be the duty of the said Treasurer and receiver of public moneys to give receipts for the moneys by them received, to the persons respectively paying the same ; to transmit, within thirty days in case of public sale, and quarterly in case of private sale, an account of all the public moneys by them received, specifying the amount received from each person, and distinguishing the sums received for surveying expenses and those received for purchase-money, to the Secretary of the Treasury, and to the registers of the land office, as the case may be. The said receivers of public moneys shall, within three months after receiving the same, transmit the moneys by them received to the Treasurer of the United States ; and the receivers of public moneys for the said sales, and, also the receivers of public moneys for the sales which have taken place at Pittsburg, under the act intituled " An act providing for the sale of the lands of the United States in the Territory northwest of the Ohio, and above the mouth of Kentucky river," shall receive one per cent. on the money received, as a compensation for clerk hire, receiving, safe keeping, and transmitting it to the Treasury of the United States.

SEC. 7. *And be it further enacted*, That it shall be the duty of the registers of the land offices, respectively, to receive and enter, on books kept for that purpose only, and on which no blank leaves or space shall be left between the different entries, the applications of any person or persons who may apply for the purchase of any section or half section, and who shall pay him the fee hereafter mentioned, and produce a receipt from the Treasurer of the United States, or from the receiver of public moneys appointed for that purpose, for three dollars for each half section such person or persons may apply for, and for at least one-twentieth part of the purchase-money, stating, carefully, in each entry, the date of the application, the date of the receipt to him produced, the amount of money specified in the said receipt, and the number of the section or half section, township, and range, applied for. If two or more persons shall apply at the same time for the same tract, the register shall immediately determine by lot, in presence of the parties, which of them shall have preference. He shall file the receipt for moneys produced by the party, and give him a copy of his entry, and, if required, a copy of the description of the tract, and a copy of the plat of the same, or either of them ; and it shall be his duty to inform the party applying for any one tract, whether the same has already been entered, purchased, or paid for, and, at his request, to give him a copy of the entry or entries concerning the same. He shall, three months after the date of each application, if the party shall not have, within that time, produced to him a receipt of the payment of one-fourth part of the purchase-money, including the twentieth part above mentioned, enter, under its proper date, in the said book of entries, that the payment has not been made, and that the land has reverted to the United States, and he shall make a note of the same in the margin of the book, opposite to the original entry. And if the party shall, either at the time of making the original entry, or at any time within three months thereafter, produce a receipt to him for the fourth part of the purchase-money, including the twentieth part aforesaid, he shall file the receipt, make an entry of the same, under its proper date, in the said book of entries, make a note of the same in the margin of the book, opposite to the original entry, and give to the party a certificate, describing the land sold, the sum paid on account,

the balance remaining due, the time and times when such balance shall become due, and that if it shall be duly discharged, the purchaser, or his assignee, or other legal representative, shall be entitled to a patent for the said lands; he shall, also, upon any subsequent payment being made, and a receipt from the receiver being produced to him, file the original receipt, give a receipt for the same to the party, and enter the same, to the credit of the party, in a book kept for that purpose, in which he shall open an account, in the name of each purchaser, for each section or half section that may be sold, either at public or private sale, and in which he shall charge the party for the whole purchase-money, and give him credit for all his payments; making the proper charges and allowances for interest or discount, as the case may be, according to the provisions of the fourth section of this act; and upon the payment being completed and the account finally settled, he shall give a certificate of the same to the party; and on producing to the Secretary of the Treasury the same final certificate, the President of the United States is hereby authorized to grant a patent for the lands to the said purchaser, his heirs or assigns; and all patents shall be countersigned by the Secretary of State, and recorded in his office.

SEC. 8. *And be it further enacted*, That the registers of the land offices, respectively, shall also note, on the book of surveys or original plat transmitted to them, every tract which may be sold, by inserting the letter A on the day when the same is applied for, and the letter P on the day when a receipt for one-fourth part of the purchase-money is produced to them, and by crossing the said letter A on the day when the land shall revert to the United States, on failure of the payment of one-fourth part of the purchase-money within three months after the date of application. And the said book of surveys, or original plat, shall be open, at all times, in presence of the register, for the inspection of any individual applying for the same and paying the proper fee.

SEC. 9. *And be it further enacted*, That it shall be the duty of the registers of the land offices to transmit, quarterly, to the Secretary of the Treasury, and to the surveyor general, an account of the several tracts applied for, of the several tracts for which the payment of one-fourth part of the purchase-money has been made, of the several tracts which have reverted to the United States on failure of the said payment; and, also, an account of all the payments of moneys by them entered, according to the receipts produced to them, specifying the sums of money, the names of the persons paying the same, the names of the officers who have received the same, and the tracts for which the same have been paid.

SEC. 10. *And be it further enacted*, That the registers aforesaid shall be precluded from entering on their books any application for lands in their own name, and in the name of any other person in trust for them; and if any register shall wish to purchase any tract of land, he may do it by application in writing to the surveyor general, who shall enter the same on books kept for that purpose by him, who shall proceed in respect to such applications, and to any payments made for the same, in the same manner which the registers by this act are directed to follow, in respect to applications made to them for lands by other persons. The registers shall, nevertheless, note on the book of surveys or original plat, the applications and payments thus by them made, and their right to the pre-emption of any tract shall bear date from the day when their application for the same shall have been entered by the surveyor general in his own book. And if any person applying for any tract shall, notwithstanding he shall have received information from the register that the same has already been applied for by the

said register, or by any other person, insist to make the application, it shall be the duty of the register to enter the same, noting in the margin that the same tract is already purchased; but upon application of the party, made in writing, and which he shall file, he may and shall, at any future time, enter under its proper date, that the party withdraws his former application, and applies in lieu thereof for any other tract: *Provided always*, That the party shall never be allowed thus to withdraw his former application, and to apply in lieu thereof for another tract, except when the tract described in his former application shall have been applied for previous to the date of that in his former application.

SEC. 11. *And be it further enacted*, That the Secretary of the Treasury shall and may prescribe such further regulations, in the manner of keeping books and accounts, by the several officers in this act mentioned, as to him may appear necessary and proper, in order fully to carry into effect the provisions of this act.

SEC. 12. *And be it further enacted*, That the registers of the land offices, respectively, shall be entitled to receive from the Treasury of the United States one-half per cent. on all the moneys expressed in the receipts by them filed and entered, and of which they shall have transmitted an account to the Secretary of the Treasury, as directed by this act; and they shall further be entitled to receive, for their own use, from the respective parties, the following fees for services rendered, that is to say: for every original application for land, and a copy of the same, for a section three dollars, for a half section two dollars; for every certificate stating that the first fourth part of the purchase-money is paid, twenty-five cents; for every subsequent receipt for moneys paid, twenty-five cents; for the final settlement of account, and giving the final certificate of the same, one dollar; for every copy, either of an application or of the description of any section or half section, or of the plat of the same, or of any entry made on their books, or of any certificate heretofore given by them, twenty-five cents for each; and for any general inspection of the book of surveys, or general plat, made in their presence, twenty-five cents.

SEC. 13. *And be it further enacted*, That the superintendents of the public sales to be made by virtue of this act, and the superintendents of the sales which have taken place by virtue of the act intituled "An act providing for the sale of the lands of the United States in the Territory northwest of the river Ohio, and above the mouth of Kentucky river," shall receive five dollars a day for every day whilst engaged in that business; and the accounting officers of the Treasury are hereby authorized to allow a reasonable compensation for books, stationery, and clerk hire, in settling the accounts of the said superintendents.

SEC. 14. *And be it further enacted*, That the fee to be paid for each patent, for half a section, shall be four dollars, and for every section five dollars, to be accounted for by the receiver of the same.

SEC. 15. *And be it further enacted*, That the lands of the United States reserved for future disposition may be let upon leases by the surveyor general, in sections or half sections, for terms not exceeding seven years, on condition of making such improvements as he shall deem reasonable.

SEC. 16. *And be it further enacted*, That each person who, before the passing of this act, shall have erected, or begun to erect, a grist mill or saw mill upon any of the lands herein directed to be sold, shall be entitled to the pre-emption of the section including such mill, at the rate of two dollars per acre: *Provided*, The person, or his heirs, claiming such right of pre-emption, shall produce to the register of the land office satisfactory evidence that he or they are entitled thereto, and shall be subject to and

comply with the regulations and provisions by this act prescribed for other purchasers.

SEC. 17. *And be it further enacted*, That so much of the "act providing for the sale of the lands of the United States in the Territory northwest of the river Ohio, and above the mouth of Kentucky river," as comes within the purview of this act, be, and the same is hereby, repealed.

Approved, May 10, 1800.

No. 3.—An Act concerning the mode of surveying the public lands of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the surveyor general shall cause all those lands north of the river Ohio, which, by virtue of the act intituled "An act providing for the sale of the lands of the United States in the Territory northwest of the river Ohio, and above the mouth of the Kentucky river," were subdivided, by running through the townships parallel lines, each way, at the end of every two miles, and by marking a corner on each of the said lines, at the end of every mile, to be subdivided into sections, by running straight lines from the mile corners thus marked to the opposite corresponding corners, and by marking on each of the said lines intermediate corners, as nearly as possible equidistant from the corners of the sections on the same. And the said surveyor general shall also cause the boundaries of all the half sections which had been purchased previous to the first day of July last, and on which the surveying fees had been paid according to law by the purchaser, to be surveyed and marked, by running straight lines from the half-mile corners heretofore marked to the opposite corresponding corners; and intermediate corners shall, at the same time, be marked on each of the said dividing lines, as nearly as possible equidistant from the corners of the half section on the same line: *Provided*, That the whole expense of surveying and marking the lines shall not exceed three dollars for every mile which has not yet been surveyed, and which shall be actually run, surveyed, and marked, by virtue of this section. And the expense of making the subdivisions directed by this section shall be defrayed out of the moneys appropriated, or which may be hereafter appropriated, for completing the surveys of the public lands of the United States.

SEC. 2. *And be it further enacted*, That the boundaries and contents of the several sections, half sections, and quarter sections, of the public lands of the United States, shall be ascertained in conformity with the following principles, any act or acts to the contrary notwithstanding:

1. All the corners marked in the surveys, returned by the surveyor general, or by the surveyor of the land south of the State of Tennessee, respectively, shall be established as the proper corners of sections, or subdivisions of sections, which they were intended to designate; and the corners of half and quarter sections, not marked on the said surveys, shall be placed, as nearly as possible, equidistant from those two corners which stand on the same line.

2. The boundary lines, actually run and marked in the surveys returned by the surveyor general, or by the surveyor of the land south of the State of Tennessee, respectively, shall be established as the proper boundary lines

of the sections or subdivisions for which they were intended; and the length of such lines, as returned by either of the surveyors aforesaid, shall be held and considered as the true length thereof. And the boundary lines which shall not have been actually run and marked as aforesaid shall be ascertained by running straight lines from the established corners to the opposite corresponding corners; but in those portions of the fractional townships, when no such opposite corresponding corners have been or can be fixed, the said boundary lines shall be ascertained by running from the established corners due north and south or east and west lines, as the case may be, to the watercourse, Indian boundary line, or other external boundary of such fractional township.

3. Each section, or subdivision of section, the contents whereof shall have been, or, by virtue of the first section of this act, shall be, returned by the surveyor general, or by the surveyor of the public lands south of the State of Tennessee, respectively, shall be held and considered as containing the exact quantity expressed in such return or returns; and the half sections and quarter sections, the contents whereof shall not have been thus returned, shall be held and considered as containing the one-half or the one-fourth part, respectively, of the returned contents of the section of which they make part.

SEC. 3. *And be it further enacted*, That so much of the act intituled "An act making provision for the disposal of the lands in the Indiana Territory, and for other purposes," as provides the mode of ascertaining the true contents of sections, or subdivisions of sections, and prevents the issue of final certificates, unless the said contents shall have been ascertained, and a plot, certified by the district surveyor, lodged with the register, be, and the same is hereby, repealed.

Approved, February 11, 1805.

No. 4.—An Act to prevent settlements being made on lands ceded to the United States until authorized by law.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That if any person or persons shall, after the passing of this act, take possession of, or make a settlement on, any lands ceded or secured to the United States, by any treaty made with a foreign nation, or by a cession from any State to the United States, which lands shall not have been previously sold, ceded, or leased, by the United States, or the claim to which lands, by such person or persons, shall not have been previously recognised and confirmed by the United States, or if any person or persons shall cause such lands to be thus occupied, taken possession of, or settled; or shall survey, or attempt to survey, or cause to be surveyed, any such lands; or designate any boundaries thereon, by marking trees or otherwise, until thereto duly authorized by law; such offender or offenders shall forfeit all his or their right, title, and claim, if any he hath or they have, of whatsoever nature or kind the same shall or may be, to the lands aforesaid, which he or they shall have taken possession of, or settled, or cause to be occupied, taken possession of or settled, or which he or they shall have surveyed, or attempt to survey, or caused to be surveyed, or the boundaries thereof he or they shall have designated, or caused to be designated, by marking trees

or otherwise. And it shall moreover be lawful for the President of the United States to direct the marshal, or officer acting as marshal, in the manner hereinafter directed, and also to take such other measures and to employ such military force as he may judge necessary and proper, to remove from lands ceded or secured to the United States, by treaty or cession as aforesaid, any person or persons who shall hereafter take possession of the same, or make, or attempt to make, a settlement thereon, until thereunto authorized by law. And every right, title, or claim, forfeited under this act, shall be taken and deemed to be vested in the United States, without any other or further proceedings: *Provided*, That nothing herein contained shall be construed to affect the right, title, or claim, of any person to lands in the Territories of Orleans or Louisiana, before the boards of commissioners established by the act intituled "An act for ascertaining and adjusting the titles and claims to land within the Territory of Orleans and the district of Louisiana," shall have made their reports, and the decision of Congress been had thereon.

SEC. 2. *And be it further enacted*, That any person or persons who, before, the passing of this act, had taken possession of, occupied, or made a settlement on, any lands ceded or secured to the United States by any treaty made with a foreign nation, or by a cession from any State to the United States, which lands had not been previously sold, ceded, or leased, by the United States, or the claim to which lands had not been previously recognized and confirmed by the United States; and who, at the time of passing this act, does or do actually inhabit and reside on such lands, may, at any time prior to the first day of January next, apply to the proper register or recorder, as the case may be, of the land office established for the disposal, registering, or recording, of such lands, or to such person or persons as may, by such registers or recorders, respectively, be appointed for the purpose of receiving such application, stating the tract or tracts of land thus occupied, settled, and inhabited, by such applicant or applicants, and requesting permission to continue thereon; and it shall thereupon be lawful for such register or recorder, respectively, to permit, in conformity with such instructions as may be given by the Secretary of the Treasury, with the approbation of the President of the United States, for that purpose, such applicant or applicants to remain on such tract or tracts of land, not exceeding three hundred and twenty acres for each applicant, as tenants at will, on such terms and conditions as shall prevent any waste or damages on such lands, and on the express condition that such applicant or applicants shall, whenever such tract or tracts of land may be sold or ceded by the United States, or whenever, for any other cause, he or they may be required, under the authority of the United States, so to do, give quiet possession of such tract or tracts of land to the purchaser or purchasers, or remove altogether from the land, as the case may be: *Provided however*, That such permission shall not be granted to any such applicant, unless he shall previously sign a declaration, stating that he does not lay any claim to such tract or tracts of land, and that he does not occupy the same by virtue of any claim, or pretended claim, derived, or pretended to be derived from any other person or persons: *And provided also*, That in all cases where the tract of land applied for includes either a lead mine or salt spring, no permission to work the same shall be granted, without the approbation of the President of the United States, who is hereby authorized to cause such mines or springs to be leased for a term not exceeding three years, and on such conditions as he shall think proper.

SEC. 3. *And be it further enacted*, That all the applications made, and provisions granted, by virtue of the last [preceding] section, shall be duly

entered on books to be kept for that purpose, by the registers and recorders aforesaid, respectively; and they shall be entitled to receive from the party, for each application, fifty cents, and for each permission one dollar.

SEC. 4. *And be it further enacted*, That it shall be lawful, after the first day of January next, for the proper marshal, or officer acting as marshal, under such instructions as may, for that purpose, be given by the President of the United States, to remove from the lands aforesaid, any and every person or persons who shall be found on the same, and who shall not have obtained permission to remain thereon as aforesaid: *Provided*, That three months' previous notice shall be given to all such person or persons, as aforesaid, who were settled on such lands prior to the passing of this act. And every such person who shall at any time after the expiration of three months after such notice shall have been given, be found on any part of the lands as aforesaid, shall, moreover, incur a penalty of one hundred dollars, to be recovered in any court having jurisdiction of the same; and be, moreover, liable, on conviction, to imprisonment, at the discretion of the court, not exceeding six months; and the certificate of the proper register or recorder shall be a sufficient evidence that the tract of land which was occupied by the offender had not been previously sold, leased, or ceded by the United States, that the claim to such tract had not been recognized and confirmed by the United States, and that the person occupying the same, and removed, or to be removed, by the marshal, had not obtained permission to remain thereon, in conformity with the provisions of this act: *Provided, always and it is further enacted*, That nothing in this section contained shall be construed to apply to any person claiming lands in the Territories of Orleans or Louisiana, whose claim shall have been filed with the proper commissioners before the first day of January next.

Approved, March 3, 1807.

No. 5.—An Act concerning the sale of the lands of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever the President of the United States has been or may be authorized to cause the public lands, in any land district, to be offered for sale, it shall be lawful, whenever he shall think it convenient, to offer for sale, at first, only a part of the lands contained in such district, and, at any subsequent time or times, to offer for sale, in the same manner, any other part, or the remainder, of the lands contained in the same.*

Approved, March 31, 1808.

No. 6.—An Act to prescribe the mode in which application shall be made for the purchase of land at the several land offices.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, from and after the first

* Secs. 2 to 8 inclusive, having expired, are omitted.

day of June next, every person making application, at any of the land offices of the United States, for the purchase, at private sale, of a tract of land, shall produce to the register a memorandum, in writing, describing the tract, which he shall enter by the proper number of the section, half section, or quarter, (as the case may be,) and of the township and range, subscribing his name thereto, which memorandum the register shall file and preserve in his office.

Approved, February 24, 1810.

No. 7.—An Act directing the terms on which lands sold at public sale, and that revert for failure in payment, shall again be sold.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no tract or tracts of the reserved sections or other public lands of the United States, that have been or may hereafter be sold at public sale, and which may have, or shall, on account of failure to complete the payment of the purchase-money, revert to the United States, shall hereafter be sold, at private sale, at a price less than that for which the same tract was sold at public sale.

Approved, January 14, 1812.

No. 8.—An Act for the establishment of a General Land Office in the Department of the Treasury.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That there shall be established in the Department of the Treasury an office, to be denominated the General Land Office; the chief officer of which shall be called the Commissioner of the General Land Office, whose duty it shall be, under the direction of the head of the Department, to superintend, execute, and perform, all such acts and things, touching or respecting the public lands of the United States, and other lands patented or granted by the United States, as have heretofore been directed by law to be done or performed in the office of the Secretary of State, of the Secretary and Register of the Treasury, and of the Secretary of War, or which shall hereafter by law be assigned to the said office.

SEC. 2. *And be it further enacted,* That there shall be in the said office an inferior officer, to be appointed by the said principal officer, to be employed therein as he shall deem proper, and to be called the chief clerk of the General Land Office, who, in all cases, when the said principal office shall become vacant, during such vacancy, shall have the charge and custody of the seal, and of all records, books, and papers, belonging to the said office.

SEC. 3. *And be it further enacted,* That the said principal officer, and every other person to be appointed and employed in the said office, shall, before he enters on the duties of his office or appointment, take an oath or affirmation, truly and faithfully to execute the trust committed to him.

SEC. 4. *And be it further enacted*, That the said Commissioner shall cause a seal of office to be made and provided for the said office, with such device as the President of the United States shall approve; and copies of any records, books, or papers, belonging to the said office, under the signature of the said Commissioner, or, when the office shall be vacant, under the signature of the chief clerk; and the said seal shall be competent evidence in all cases in which the original records, books, or papers, could be evidence.

SEC. 5. *And be it further enacted*, That the said Commissioner shall, forthwith, after his appointment, be entitled to the custody and shall take charge of the said seal, and also of all records, books, and papers, remaining in the offices of the Secretary of State, of the Secretary and Register of the Treasury, and of the Secretary of War, touching or concerning the public lands of the United States; and the said records, books, and papers, shall become, and be deemed, the records, books and papers, of the said office.

SEC. 6. *And be it further enacted*, That the said Commissioner shall, when required by the President of the United States or either House of Congress, make a plat of any land surveyed under the authority of the United States, and give such information respecting the public lands, and concerning the business of his office, as shall be directed.

SEC. 7. *And be it further enacted*, That in all cases in which land has heretofore or shall hereafter be given by the United States for military services, warrants shall be granted to the parties entitled to such land by the Secretary of War; and such warrants shall be recorded in the said Land Office, in books to be kept for the purpose, and shall be located as is or may be provided by law; and patents shall afterwards be issued accordingly.

SEC. 8. *And be it further enacted*, That all patents issuing from the said office shall be issued in the name of the United States, and under the seal of the said office, and be signed by the President of the United States, and countersigned by the commissioner of the said office, and shall be recorded in the said office, in books to be kept for the purpose.

SEC. 9. *And be it further enacted*, That all returns relative to the public lands, heretofore directed to be made to the Secretary of the Treasury, shall hereafter be made to the said commissioner, who shall have power to audit and settle all public accounts relative to the public lands: *Provided*, That it shall be the duty of the said commissioner, upon the settlement of any such account, to certify the balance, and transmit the account, with the vouchers and certificate, to the Comptroller of the Treasury, for his examination and decision thereon.

SEC. 10. *And be it further enacted*, That no person appointed to an office instituted by this act, or employed in any such office, shall, directly or indirectly, be concerned in the purchase of any right, title, or interest, in any public land, either in his own right, or in trust for any other person, or in the name or right of any other person in trust for himself, nor shall take or receive any fee or emolument for negotiating or transacting the business of the office. And any person offending in the premises against the prohibitions of this act shall forfeit and pay one hundred dollars; and, upon conviction, shall be removed from office.

SEC. 11. *And be it further enacted*, That the Commissioner of the said Land Office shall be appointed by the President of the United States, by and with the advice and consent of the Senate; and shall receive an annual salary, equal to the salary of the Auditor of the Treasury, payable quarterly, and the sum of two thousand two hundred and fifty dollars is hereby appro-

priated for the said compensation during the year one thousand eight hundred and twelve, to be paid out of any moneys in the Treasury not otherwise appropriated. And the said Commissioner shall have the same privilege with the Comptroller of the Treasury, of sending and receiving letters and packages, and also final certificates and patents for land, free of postage.

SEC. 12. *And be it further enacted*, That the Commissioner of the Land Office shall be authorized to employ a sufficient number of clerks: *Provided*, That their annual compensation shall not exceed, in the whole, seven thousand dollars; and the said compensation shall be paid in the following manner, during the year one thousand eight hundred and twelve, that is to say: Three thousand eight hundred dollars shall be paid out of the moneys appropriated for the compensation of clerks, during said year, in the office of the Secretary of the Treasury; one thousand four hundred dollars shall be paid out of the moneys appropriated for the compensation of clerks, during said year, in the office of the Secretary of State; and three hundred dollars shall be paid out of the moneys appropriated for the compensation of clerks during said year, in the office of the Secretary of War.

Approved, April 25, 1812.

No. 9.—An Act providing for the division of certain quarter sections in future sales of the public lands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, from and after the first day of September next, the sections designated by number two, five, twenty, twenty-three, thirty, and thirty-three, in each and every township of the public lands the sale of which is now, or hereafter may be, authorized by law, shall be offered for sale either in quarter sections or half-quarter sections, at the option of the purchaser; and in every case of the division of a quarter section, the partition shall be made by a line running due north and south, and in every other respect the said sections shall be offered, whether at public or private sale, on the same terms and conditions as have been or may be by law provided for the sale of the other public lands of the United States.

Approved, February 22, 1817.

No. 10.—An Act for changing the compensation of receivers and registers of the land offices.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, instead of the compensation now allowed by law to the receivers of public moneys for the lands of the United States, they shall receive an annual salary of five hundred dollars each, and a commission of one per centum on the moneys received, as a compensation for clerk hire, receiving, safe keeping, and transmitting, such moneys to the Treasury of the United States: *Provided always*, That the whole amount which any receiver of public moneys shall receive, under

the provisions of this act, shall not exceed, for any one year, the sum of three thousand dollars.

SEC. 2. *And be it further enacted*, That, instead of the compensation now allowed by law to the registers of the land offices, they shall receive an annual salary of five hundred dollars each, and a commission of one per centum on all the moneys expressed in the receipts by them filed and entered, and of which they shall have transmitted an account to the Secretary of the Treasury: *Provided always*, That the whole amount which any register of the land offices shall receive, under the provisions of this act, shall not exceed, for any one year, the sum of three thousand dollars.

Approved, April 20, 1818.

No. 11.—An Act providing for the correction of errors in making entries of land at the land offices.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in every case of a purchaser of public lands, at private sale, having entered at the land office a tract different from that he intended to purchase, and being desirous of having the error in his entry corrected, he shall make his application for that purpose to the register of the land office; and if it shall appear, from testimony satisfactory to the register and receiver of public moneys, that an error in the entry has been made, and that the same was occasioned by original incorrect marks made by the surveyor, or by the obliteration or change of the original marks and numbers at corners of the tract of land; or that it has, in any otherwise, arisen from mistake or error of the surveyor, or officers of the land office; the said register and receiver of public moneys shall report the case, with the testimony, and their opinion thereon, to the Secretary of the Treasury, who shall have power to direct, if in his opinion it shall be proper, that the purchaser shall be at liberty to withdraw the entry so erroneously made, and that the moneys which have been paid shall be applied in the purchase of other lands in the same district, or credited in the payment for other lands which shall have been purchased at the same office.

*Approved, March 3, 1819.**

No. 12.—An Act making further provision for the sale of the public lands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, from and after the first day of July next, all the public lands of the United States, the sale of which is or may be authorized by law, shall, when offered at public sale to the highest bidder, be offered in half-quarter sections; and, when offered at private sale, may be purchased, at the option of the purchaser, either in entire sections, half sections, quarter sections, or half-quarter sections; and in every case of the division of a quarter section, the line

* See Nos. 14, 17, 19, and Act of February 28, 1859.

for the division thereof shall run north and south, and the corners and contents of half-quarter sections which may thereafter be sold shall be ascertained in the manner and on the principles directed and prescribed by the second section of an act entitled "An act concerning the mode of surveying the public lands of the United States," passed on the eleventh day of February, eighteen hundred and five; and fractional sections, containing one hundred and sixty acres or upwards, shall, in like manner, as nearly as practicable, be subdivided into half-quarter sections, under such rules and regulations as may be prescribed by the Secretary of the Treasury; but fractional sections containing less than one hundred and sixty acres shall not be divided, but shall be sold entire: *Provided*, That this section shall not be construed to alter any special provision made by law for the sale of land in town lots.

SEC. 2. *And be it further enacted*, That credit shall not be allowed for the purchase-money on the sale of any of the public lands which shall be sold after the first day of July next, but every purchaser of land sold at public sale thereafter shall, on the day of purchase, make complete payment therefor; and the purchaser at private sale shall produce to the register of the land office a receipt from the Treasurer of the United States, or from the receiver of public moneys of the district, for the amount of the purchase-money on any tract, before he shall enter the same at the land office; and if any person, being the highest bidder at public sale for a tract of land, shall fail to make payment therefor on the day on which the same was purchased, the tract shall be again offered at public sale on the next day of sale, and such person shall not be capable of becoming the purchaser of that or any other tract offered at such public sales.

SEC. 3. *And be it further enacted*, That, from and after the first day of July next, the price at which the public lands shall be offered for sale shall be one dollar and twenty-five cents an acre; and at every public sale, the highest bidder, who shall make payment as aforesaid, shall be the purchaser; but no lands shall be sold, either at public or private sale, for a less price than one dollar and twenty-five cents an acre; and all the public lands which shall have been offered at public sale before the first day of July next, and which shall then remain unsold, as well as the lands that shall thereafter be offered at public sale according to law, and remain unsold at the close of such public sales, shall be subject to be sold at private sale, by entry at the land office, at one dollar and twenty-five cents an acre, to be paid at the time of making such entry as aforesaid; with the exception, however, of the lands which may have reverted to the United States for failure in payment, and of the heretofore reserved sections, for the future disposal of Congress, in the States of Ohio and Indiana, which shall be offered at public sale as hereinafter directed.

SEC. 4. *And be it further enacted*, That no lands which have reverted or which shall hereafter revert and become forfeited to the United States, for failure in any manner to make payment, shall after the first day of July next, be subject to entry at private sale, nor until the same shall have been first offered to the highest bidder at public sale; and all such lands which shall have reverted before the said first day of July next, and which shall then belong to the United States, together with the sections and parts of sections heretofore reserved for the future disposal of Congress, which shall, at the time aforesaid, remain unsold, shall be offered at public sale to the highest bidder, who shall make payment therefor, in half-quarter sections, at the land office for the respective districts, on such day or days as shall, by proclamation of the President of the United States, be designated for that purpose; and all lands which shall revert and become for-

feited for failure of payment, after the said first day of July next, shall be offered in like manner at public sale, at such time or times as the President shall, by his proclamation, designate for the purpose : *Provided*, That no such lands shall be sold, at any public sales hereby authorized, for a less price than one dollar and twenty-five cents an acre, nor on any other terms than that of cash payment ; and all the lands offered at such public sales, and which shall remain unsold at the close thereof, shall be subject to entry at private sale, in the same manner and at the same price with the other lands sold at private sale at the respective land offices.

SEC. 5. *And be it further enacted*, That the several public sales authorized by this act shall, respectively, be kept open for two weeks, and no longer ; and the registers of the land office and the receivers of public moneys shall each, respectively, be entitled to five dollars for each day's attendance thereon.

SEC. 6.—*And be it further enacted*, That, in every case hereafter, where two or more persons shall apply for the purchase, at private sale, of the same tract at the same time, the register shall determine the preference by forthwith offering the tract to the highest bidder.

Approved, April 24, 1820.

No. 13.—An Act to enable the proprietors of lands held by titles derived from the United States to obtain copies of papers from the proper department, and to declare the effect of such copies.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever any person, claiming to be interested in or entitled to land under any grant or patent from the United States, shall apply to the Treasury Department for copies of papers filed and remaining therein, in any wise affecting the title to such land, it shall be the duty of the Secretary of the Treasury to cause such copies to be made out, and authenticated under his hand and seal, for the person so applying ; and such copies, so authenticated, shall be evidence equally as the original papers.

Approved, January 23, 1823.

No. 14.—An Act supplementary to an act approved on the third day of March, one thousand eight hundred and nineteen, entitled "An act providing for the correction of errors in making entries of land at the land offices."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That where any mistake, in relation to the correct numbers of any tract of land, not exceeding in quantity one half section, may have been heretofore made by any purchaser of the public lands of the United States at private sale, and where one or more payments shall have been made by the person making the entry on any tract entered by mistake, and where such payment has not been forfeited, previously to the passing of this act, for a failure to complete the payments on such tract ; and where the purchaser or purchasers may not, in relation to said tract, have in any way taken advantage of the provisions

of the act of the second of March, eighteen hundred and twenty-one, entitled "An act for the relief of the purchasers of the public lands prior to the first day of July, eighteen hundred and twenty," or of the act supplementary thereto, or the act continuing in force said supplementary act, and where the person or persons making the purchase has not, in any way, transferred his, her, or their right to the certificate of purchase, or the tract so purchased, and where no patent shall have issued for the tract so erroneously purchased; and, also, in all cases of an entry hereafter made of a tract of land not intended to be entered, by a mistake of the true numbers of the tract intended to be entered, where the tract thus erroneously entered does not in quantity exceed one half section; and where the certificate of the original purchaser or purchasers has not been assigned, or the right of the original purchaser or purchasers in any way transferred, and where six months from the time the entry shall have been made may not have elapsed, or the patent issued for the tract erroneously entered, the purchaser or purchasers, or, in case of his, her, or their death, the legal representatives (not being assignees or transferees) may, either in the cases of entry before or after the passing of this act, and in any case coming within its provisions, file his, her, or their own affidavit or affidavits, with such additional evidence as can be procured, showing the mistake of the numbers of the tract intended to be entered, and that every reasonable precaution and exertion had been used to avoid the error, with the register and receiver of the land district within which such tract of land is situated, who shall transmit the evidence submitted to them in each case, together with their written opinion or opinions, both as to [the] existence of the mistake and the credibility of each person testifying thereto, to the Commissioner of the General Land Office, who, if he be entirely satisfied [that] the mistake has been made, and that every reasonable precaution and exertion had been made to avoid it, shall be authorized to change the entry and transfer the payment from the tract erroneously entered to that intended to be entered, if unsold; but if sold, to any other tract liable to entry: *Provided*, That the oath of the person or persons interested shall in no case be deemed sufficient, in the absence of other corroborating testimony, to authorize any such change of entry: *And provided also*, That nothing herein contained shall affect the right of third persons.

SEC. 2. *And be it further enacted*, That either the register or receiver may administer all oaths to be made under the provisions of this act, and every person, knowingly, wilfully, and corruptly, swearing falsely, on any oath administered to him or her under the provisions of this act, shall, on indictment and conviction for such offence before any court having competent jurisdiction to try the same, suffer the pains and penalties of wilful and corrupt perjury.

SEC. 3. *And be it further enacted*, That for every oath administered under the provisions of this act, the register and receiver shall be allowed the sum of twenty-five cents, and twenty-five cents for every hundred words of the evidence received and transmitted to the Commissioner of the General Land Office; to be paid by the party making the application for a change of entry.

*Approved, May 24, 1824.**

* See Nos. 11, 17, 19.

No. 15.—An Act changing the mode of surveying the public lands on any river, lake, bayou, or watercourse.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever, in the opinion of the President of the United States, a departure from the ordinary mode of surveying land on any river, lake, bayou, or watercourse, would promote the public interest, he may direct the surveyor general in whose district such land is situated, and where the change is intended to be made, under such rules and regulations as the President may prescribe, to cause the lands thus situated to be surveyed in tracts of two acres in width, fronting on any river, bayou, lake, or watercourse, and running back the depth of forty acres; which tracts of land, so surveyed, shall be offered for sale entire, instead of in half-quarter sections, and in the usual manner, and on the same terms, in all respects, as the other public lands of the United States.

Approved, May 24, 1824.

No. 16.—An Act granting to the counties or parishes of each State and Territory of the United States, in which the public lands are situated, the right of pre-emption to quarter sections of land, for seats of justice within the same.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be granted to the several counties or parishes of each State and Territory of the United States where there are public lands, at the minimum price for which public lands of the United States are sold, the right of pre-emption to one quarter section of land, in each of the counties or parishes of said States and Territories, in trust for said counties or parishes, respectively, for the establishment of seats of justice therein: *Provided,* The proceeds of the sale of each of said quarter sections shall be appropriated for the purpose of erecting public buildings in the county or parish for which it is located, after deducting therefrom the amount originally paid for the same: *And provided further,* That the seat of justice for said counties or parishes, respectively, shall be fixed previously to a sale of the adjoining lands within the county or parish for which the same is located.

SEC. 2. *And be it further enacted,* That so much of such acts, heretofore passed, granting to States rights of pre-emption for county or parish purposes, as require said seats of justice to be continued at or near the centre of each of said counties or parishes, be, and the same is hereby, repealed.

Approved, May 26, 1824.

No. 17.—An Act authorizing repayment for land erroneously sold by the United States.*

Be it enacted by the Senate and House of Representatives of the

* By the third section of the act of 25th February, 1825, "making appropriations for the support of Government," &c., it is further provided "that the Secretary of the Treasury be, and he is hereby, authorized to pay, out of any money in the

United States of America in Congress assembled, That every person, or the legal representative of every person, who is or may be a purchaser of a tract of land from the United States, the purchase whereof is or may be void, by reason of a prior sale thereof by the United States, or by the confirmation or other legal establishment of a prior British, French, or Spanish grant thereof, or for want of title thereto in the United States, from any other cause whatsoever, shall be entitled to repayment of any sum or sums of money paid for or on account of such tract of land, on making proof, to the satisfaction of the Secretary of the Treasury, that the same was erroneously sold, in manner aforesaid by the United States, who is hereby authorized and required to repay such sum or sums of money paid as aforesaid.

*Approved, January 12, 1825.**

No. 18.—An Act to appropriate lands for the support of schools in certain townships and fractional townships not before provided for.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, to make provision for the support of schools in all townships or fractional townships for which no land has been heretofore appropriated for that use, in those States in which section number sixteen, or other land equivalent thereto, is by law directed to be reserved for the support of schools in each township, there shall be reserved and appropriated, for the use of schools, in each entire township, or fractional township, for which no land has been heretofore appropriated or granted for that purpose, the following quantities of land, to wit: for each township or fractional township, containing a greater quantity of land than three-quarters of an entire township, one section; for a fractional township, containing a greater quantity of land than one-half, and not more than three-quarters, of a township, three-quarters of a section; for a fractional township, containing a greater quantity of land than one-quarter, and not more than one-half, of a township, one-half section; and for a fractional township, containing a greater quantity of land than one entire section, and not more than one-quarter of a township, one-quarter section of land.

SEC. 2. *And be it further enacted*, That the aforesaid tracts of land shall be selected, by the Secretary of the Treasury, out of any unappropriated public land within the land district where the township for which any tract is selected may be situated; and, when so selected, shall be held by the same tenure, and upon the same terms, for the support of schools, in such township, as section number sixteen is or may be held, in the State where such township shall be situated.

SEC. 3. *And be it further enacted*, That there shall be selected, in the manner above mentioned, one section and one quarter section of land, for the support of schools within that tract of country usually called the French grant, in the county of Sciota, and State of Ohio.

Approved, May 20, 1826.

Treasury not otherwise appropriated, the sum or sums of money to which any person, or the legal representatives of any person, may be entitled, by virtue of the act authorizing repayment for land erroneously sold by the United States, approved the 12th day of January, in the year 1825, upon such person, or his or her legal representatives, complying with the requisitions of this act."

* Extended by Act of February 28, 1859, q. v.

No. 19.—An Act supplementary to an act entitled “An act providing for the correction of errors in making entries of lands at the land offices,” passed March third, eighteen hundred and nineteen.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of the act entitled “An act providing for the correction of errors in making entries of lands at the land offices, approved March third, one thousand eight hundred and nineteen, are hereby declared to extend to cases where patents have issued or shall hereafter issue; upon condition that the party concerned shall surrender his or her patent to the Commissioner of the General Land Office, with a relinquishment of title thereon, executed in a form to be prescribed by the Secretary of the Treasury.

*Approved, May 24, 1828.**

No. 20.—An Act for the relief of the purchasers of public lands, and for the suppression of fraudulent practices at the public sales of the lands of the United States.

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SEC. 4. *And be it further enacted,* That if any person or persons shall, before or at the time of the public sale of any of the lands of the United States, bargain, contract, or agree, or shall attempt to bargain, contract, or agree, with any other person or persons, that the last-named person or persons shall not bid upon or purchase the land so offered for sale, or any parcel thereof, or shall, by intimidation, combination, or unfair management, hinder or prevent, or attempt to hinder or prevent, any person or persons from bidding upon or purchasing any tract or tracts of land so offered for sale, every such offender, his, her, or their aiders and abettors, being thereof duly convicted, shall, for every such offence, be fined not exceeding one thousand dollars, or imprisoned not exceeding two years, or both, in the discretion of the court.

SEC. 5. *And be it further enacted,* That if any person or persons shall, before or at the time of the public sale of any of the lands of the United States, enter into any contract, bargain, agreement, or secret understanding, with any other person or persons, proposing to purchase such land, to pay or give to such purchasers, for such land, a sum of money or other article of property, over and above the price at which the land may or shall be bid off by such purchasers, every such contract, bargain, agreement, or secret understanding, and every bond, obligation, or writing, of any kind whatsoever, founded upon or growing out of the same, shall be utterly null and void. And any person or persons, being a party to such contract, bargain, agreement, or secret understanding, who shall or may pay to such purchasers any sum of money or other article of property, as aforesaid, over and above the purchase-money of such land, may sue for and recover such excess from such purchasers in any court having jurisdiction of the same. And if the party aggrieved, have no legal evidence of such contract, bargain, agreement, or secret understanding, or of the payment of the excess aforesaid, he may, by bill in equity, compel such purchasers to make discovery thereof; and if in such case the complainant shall ask for relief, the court in which the bill is pending may proceed to final decree between

* See No. 11.

the parties to the same : *Provided*, Every such suit, either in law or equity, shall be commenced within six years next after the sale of said land by the United States.

Approved, March 31, 1830.

No. 21.—An Act to protect the surveyors of the public lands of the United States, and to punish persons guilty of interrupting and hindering, by force, surveyors in the discharge of their duty.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person, who shall hereafter, in any manner, by threats or force, interrupt, hinder, or prevent, the surveying of the public lands of the United States, or of any private land claim which has or may be confirmed by the United States, or the authority thereof, by the persons authorized to survey the same, in conformity with the instructions of the Commissioner of the General Land Office, or the principal surveyors in any of the districts, in any State or Territory, shall be considered and adjudged to be guilty of a misdemeanor, and, upon conviction in any district or circuit court of the United States, in any State or Territory, having jurisdiction of the same, shall be fined a sum not less than fifty dollars, nor more than three thousand dollars, and be imprisoned for a period of time not less than one nor more than three years.

SEC. 2. *And be it further enacted*, That, whenever the President of the United States shall be satisfied that forcible opposition has been offered, or will likely be offered, to any surveyor, or deputy surveyor, or assistant surveyor, in the discharge of his or their duties, in surveying the public lands of the United States, it shall and may be lawful for the President to order the marshal of the State or district, by himself or deputy, to attend such surveyor, deputy, or assistant surveyor, with sufficient force to protect such officer in the execution of his duty as surveyor, and to remove force should any be offered.

Approved, May 29, 1830.

No. 22.—An Act to grant pre-emption rights to settlers on the public lands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That every settler or occupant of the public lands, prior to the passage of this act, who is now in possession, and cultivated any part thereof in the year one thousand eight hundred and twenty-nine, shall be, and he is hereby, authorized to enter, with the register of the land office for the district in which such lands may lie, by legal subdivisions, any number of acres, not more than one hundred and sixty, or a quarter section, to include his improvement, upon paying to the United States the then minimum price of said land : *Provided however*, That no entry or sale of any land shall be made, under the provisions of this act, which shall have been reserved for the use of the United States, or either of the several States, in which any of the public lands may be situated.

SEC. 2. *And be it further enacted*, That if two or more persons be settled upon the same quarter section, the same may be divided between the two first actual settlers, if, by a north and south or east and west line, the settlement or improvement of each can be included in a half-quarter section, and in such case the said settlers shall each be entitled to a pre-emption of eighty acres of land elsewhere in said land district, so as not to interfere with other settlers having a right of preference.

SEC. 3. *And be it further enacted*, That, prior to any entries being made under the privileges given by this act, proof of settlement or improvement shall be made, to the satisfaction of the register and receiver of the land district in which such lands may lie, agreeably to the rules to be prescribed by the Commissioner of the General Land Office for that purpose, which register and receiver shall each be entitled to receive fifty cents for his services therein. And that all assignments and transfers of the right of pre-emption given by this act, prior to the issuance of patents, shall be null and void.

SEC. 4. *And be it further enacted*, That this act shall not delay the sale of any of the public lands of the United States beyond the time which has been or may be appointed, for that purpose, by the President's proclamation; nor shall any of the provisions of this act be available to any person or persons who shall fail to make the proof and payment required before the day appointed for the commencement of the sales of lands including the tract or tracts on which the right of pre-emption is claimed; nor shall the right of pre-emption, contemplated by this act, extend to any land which is reserved from sale, by act of Congress, or by order of the President, or which may have been appropriated for any purpose whatsoever.

SEC. 5. *And be it further enacted*, That this act shall be and remain in force for one year from and after its passage.

Approved, May 29, 1830.

No. 23.—An Act supplementary to an act to grant pre-emption rights to settlers on public lands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, from and after the passage of this act, all persons who have purchased under an act entitled "An act to grant pre-emption rights to settlers on the public lands," approved the twenty-ninth of May, one thousand eight hundred and thirty, may assign and transfer their certificates of purchase, or final receipts, and patents may issue in the name of such assignee, anything in the act aforesaid to the contrary notwithstanding.

Approved, January 23, 1832.

No. 24.—An Act supplementary to the several laws for the sale of the public lands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, from and after the first day of May next, all the public lands of the United States, when

offered at private sale, may be purchased, at the option of the purchaser, either in entire sections, half sections, quarter sections, half-quarter sections, or quarter-quarter sections; and in every case of a division of a half-quarter section, the line for the division thereof shall run east and west, and the corners and contents of quarter-quarter sections, which may thereafter be sold, shall be ascertained, as nearly as may be, in the manner and on the principles directed and prescribed by the second section of an act entitled "An act concerning the mode of surveying the public lands of the United States," passed on the eleventh day of February, eighteen hundred and five; and fractional sections, containing fewer or more than one hundred and sixty acres, shall, in like manner, as nearly as may be practicable, be subdivided into quarter-quarter sections, under such rules and regulations as may be prescribed by the Secretary of the Treasury: *Provided*, That this act shall not be construed to alter any special provision made by law for the sale of land in town lots: *And provided, also*, That no person shall be permitted to enter more than one-half-quarter section of land under this act in quarter-quarter sections in his own name, or in the name of any other person, and in no case unless he intends it for cultivation or for the use of his improvement. And the person making application to make an entry under this act shall file his and her affidavit, under such regulations as the Secretary of the Treasury may prescribe, that he or she makes the entry in his or her own name, for his or her own benefit, and not in trust for another: * *Provided, further*, That all actual settlers, being housekeepers, upon the public lands, shall have the right of pre-emption to enter, within six months after the passage of this act, not exceeding the quantity of one-half-quarter section, under the provisions of this act, to include his or their improvements, under such regulations as have been or may be prescribed by the Secretary of the Treasury; and in cases where two persons shall live upon the same quarter section, subject to be entered under the provisions of this act, each shall have the right to enter that quarter-quarter section which includes his improvements.

Approved, April 5, 1832.

No. 25.—An Act supplemental to the act "granting the right of pre-emption to settlers on the public lands," approved the twenty-ninth day of May, eighteen hundred and thirty.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all the occupants and settlers upon the public lands of the United States, who are entitled to a pre-emption according to the provisions of the act of Congress approved the twenty-ninth day of May, eighteen hundred and thirty, and who have not been or shall not be enabled to make proof and enter the same within the time limited in said act, in consequence of the public surveys not having been made and returned, or where the land was not attached to any land district, or where the same has been reserved from sale on account of a disputed boundary between any State and Territory, the said occupants shall be permitted to enter the said lands on the same conditions, in every respect, as are prescribed in said act, within one year after the surveys are made, or the land attached to a land district, or the boundary line estab-

* This proviso repealed per act, 8th May, 1856.

lished ; and if the said lands shall be proclaimed for sale before the expiration of one year, as aforesaid, then they shall be entered before the sale thereof.

SEC. 2. *And be it further enacted*, That the occupants upon fractions shall be permitted, in like manner, to enter the same, so as not to exceed in quantity one quarter section ; and if the fractions exceed a quarter section, the occupant shall be permitted to enter one hundred and sixty acres, to include his or their improvement, at the price aforesaid.

Approved, July 14, 1832.

No. 26.—An Act prescribing the mode by which patents for public lands shall be signed and executed.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be lawful for the President of the United States, by and with the advice and consent of the Senate, to appoint a secretary, with a salary of one thousand five hundred dollars per annum, whose duty it shall be, under the direction of the President, to sign in his name, and for him, all patents for lands sold or granted under the authority of the United States.

SEC. 2. *And be it further enacted*, That this act shall continue and be in force until the fourth day of March, one thousand eight hundred and thirty-seven, and no longer.

Approved, March 2, 1833.

No. 27.—An Act to revive the act entitled “An act supplementary to the several laws for the sale of [the] public lands.”

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in all cases in which persons were settlers or occupants of the public lands prior to the first day of May, one thousand eight hundred and thirty-two, and were authorized to enter, under the provisions of the act entitled “An act supplementary to the several laws for [the] sale of the public lands,” approved April fifth, one thousand eight hundred and thirty-two, and were prevented from making their entries in consequence of the public surveys not having been made and returned, or where the land was not attached to any land district, or where the same has been reserved from sale in consequence of a disputed boundary between two States, or between a State and Territory, the said occupants shall be permitted to enter the said lands, on the same conditions in every respect as were prescribed in said act, within one year after the surveys are made, or the land attached to a land district, or the boundary line established ; and if the land shall be proclaimed for sale before the expiration of one year, as aforesaid, then the said settlers or occupants shall be permitted to enter before the sale thereof.

Approved, March 2, 1833.

No. 28.—An Act to revive the act entitled “An act to grant pre-emption rights to settlers on the public lands,” approved May twenty-nine, one thousand eight hundred and thirty.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That every settler or occupant of the public lands, prior to the passage of this act, who is now in possession, and cultivated any part thereof in the year one thousand eight hundred and thirty-three, shall be entitled to all the benefits and privileges provided by the act entitled “An act to grant pre-emption rights to settlers on the public lands,” approved May twenty-nine, one thousand eight hundred and thirty; and the said act is hereby revived and shall continue in force two years from the passage of this act, and no longer.

SEC. 2. *And be it further enacted,* That where a person inhabits one quarter section and cultivates another, he shall be permitted to enter the one or the other, at his discretion; *Provided,* Such occupant shall designate, within six months from the passage of this act, the quarter section of which he claims the pre-emption under the same.

SEC. 3. *And be it further enacted,* That all persons residing on the public lands, and cultivating the same, prior to the year eighteen hundred and twenty-nine, and who were deprived of the advantages of the law passed on the twenty-ninth May, eighteen hundred and thirty, by the constructions placed on said law by the Secretary of the Treasury, be, and they are hereby, authorized to enter, at the minimum price of the Government, one quarter section of the public lands within said land district.

Approved, June 19, 1834.

No. 29.—An Act limiting the times of advertising the sales of the public lands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That hereafter the public lands which shall be exposed to public sale, by order of the President of the United States, shall be advertised for a period of not less than three nor more than six months prior to the day of sale, any thing in any law heretofore enacted to the contrary notwithstanding.

Approved, June 28, 1834.

No. 30.—An Act to give effect to patents for public lands issued in the names of deceased persons.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in all cases where patents for public lands have been or may hereafter be issued, in pursuance of any law of the United States, to a person who had died, or who shall hereafter die, before the date of such patent, the title to the land designated therein shall enure to, and become vested in, the heirs, devisees, or assignees, of such deceased patentee, as if the patent had issued to the deceased person during life; and the provisions of this act shall be con-

strued to extend to patents for lands within the Virginia military district in the State of Ohio,

Approved, May 20, 1836.

No. 31.—An Act to confirm the sales of public lands in certain cases.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in all cases where public lands, taken from the bounds of a former land district, and included within the bounds of a new district, have been sold by the officers of such former district, under the pre-emption laws or otherwise, at any time prior to the opening of the land office in such new district, and in which the Commissioner of the General Land Office shall be satisfied that the proceedings in other respect, have been fair and regular, such entries and sales shall be, and are hereby, confirmed; and patents shall be issued thereupon, as in other cases.

SEC. 2. *And be it further enacted,* That in all cases where any entry has been made under the pre-emption laws, pursuant to instructions sent to the register and receiver from the Treasury Department, and the proceedings have been in all other respects fair and regular, such entries and sales are hereby confirmed, and patents shall be issued thereon, as in other cases.

Approved, July 2, 1836.

No. 32.—An Act to reorganize the General Land Office.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, from and after the passage of this act, the executive duties now prescribed, or which may hereafter be prescribed by law, appertaining to the surveying and sale of the public lands of the United States, or in any wise respecting such public lands, and, also, such as relate to private claims of land and the issuing of patents for all grants of land under the authority of the Government of the United States, shall be subject to the supervision and control of the Commissioner of the General Land Office, under the direction of the President of the United States.

SEC. 2. *And be it further enacted,* That there shall be appointed in said office by the President, by and with the advice and consent of the Senate, two subordinate officers, one of whom shall be called principal clerk of the public lands, and the other, principal clerk on private land claims, who shall perform such duties as may be assigned to them by the Commissioner of the General Land Office; and in case of vacancy in the office of the Commissioner of the General Land Office, or of the absence or sickness of the Commissioner, the duties of said office shall devolve upon and be performed, *ad interim*, by the principal clerk of the public lands.*

SEC. 3. *And be it further enacted,* That there shall be appointed by the

* By the act of June 2, 1858, these duties are transferred to the chief clerk.

President by and with the advice and consent of the Senate, an officer to be styled the principal clerk of the surveys, whose duty it shall be to direct and superintend the making of surveys, the returns thereof, and all matters relating thereto, which are done through the officers of the surveyor general; and he shall perform such other duties as may be assigned to him by the Commissioner of the General Land Office.

SEC. 4. *And be it further enacted*, That there shall be appointed by the President, by and with consent of the Senate, a recorder of the General Land Office, whose duty it shall be, in pursuance of instructions from the Commissioner, to certify and affix the seal of the General Land Office to all patents for public lands, and he shall attend to the correct engrossing and recording and transmission of such patents. He shall prepare alphabetical indexes of the names of patentees and of persons entitled to patents; and he shall prepare such copies and exemplifications of matters on file, or recorded in the General Land Office, as the Commissioner may from time to time direct.

SEC. 5. *And be it further enacted*, That there shall be appointed by the President, by and with the advice and consent of the Senate, an officer, to be called the solicitor of the General Land Office, with an annual salary of two thousand dollars, whose duty it shall be to examine and present a report to the Commissioner of the state of facts in all cases referred by the Commissioner to his attention, which shall involve questions of law, or where the facts are in controversy between the agents of the Government and individuals, or there are conflicting claims of parties before the Department, with his opinion thereon; and, also, to advise the Commissioner, when required thereto, on all questions growing out of the management of the public lands, or the title thereto, private land claims, Virginia military scrip, bounty lands, and pre-emption claims; and to render such further professional services in the business of the Department as may be required, and shall be connected with the discharge of the duties thereof.*

SEC. 6. *And be it further enacted*, That it shall be lawful for the President of the United States, by and with the advice and consent of the Senate, to appoint a secretary, with a salary of fifteen hundred dollars per annum, whose duty it shall be, under the direction of the President, to sign in his name, and for him, all patents for land sold or granted under the authority of the United States.

SEC. 7. *And be it further enacted*, That it shall be the duty of the Commissioner to cause to be prepared, and to certify, under the seal of the General Land Office, such copies of records, books, and papers on file in his office, as may be applied for, to be used in evidence in courts of justice.

SEC. 8. *And be it further enacted*, That whenever the office of recorder shall become vacant, or in case of the sickness or absence of the recorder, the duties of his office shall be performed, *ad interim*, by the principal clerk on private land claims.

SEC. 9. *And be it further enacted*, That the receivers of the land offices shall make to the Secretary of the Treasury monthly returns of the moneys received in their several offices, and pay over such money pursuant to his instructions. And they shall also make to the Commissioner of the General Land Office like monthly returns, and transmit to him quarterly accounts current of the debits and credits of their several offices with the United States.

SEC. 10. *And be it further enacted*, That the Commissioner of the General Land Office shall be entitled to receive an annual salary of three

* Repealed. See act of 12th of June, 1844.

thousand dollars; the recorder of the General Land Office, an annual salary of fifteen hundred dollars; the principal clerk of the surveys, an annual salary of eighteen hundred dollars; and each of the said principal clerks, an annual salary of eighteen hundred dollars; from and after the date of their respective commissions: and that the said Commissioner be authorized to employ, for the service of the General Land Office, one clerk, whose annual salary shall not exceed fifteen hundred dollars; four clerks, whose annual salary shall not exceed fourteen hundred dollars each; sixteen clerks, whose annual salary shall not exceed thirteen hundred dollars each; twenty clerks, whose annual salary shall not exceed twelve hundred dollars each; five clerks, whose annual salary shall not exceed eleven hundred dollars each; thirty-five clerks, whose annual salary shall not exceed one thousand dollars each; one principal draughtsman, whose annual salary shall not exceed fifteen hundred dollars; one assistant draughtsman, whose annual salary shall not exceed twelve hundred dollars; two messengers, whose annual salary shall not exceed seven hundred dollars each; three assistant messengers, whose annual salary shall not exceed three hundred and fifty dollars each; and two packers, to make up packages of patents, blank forms, and other things necessary to be transmitted to the district land offices, at a salary of four hundred and fifty dollars each.

SEC. 11. *And be it further enacted*, That such provisions of the act of the twenty-fifth of April, in the year one thousand eight hundred and twelve, entitled "An act for the establishment of a General Land Office in the Department of the Treasury," and of all acts amendatory thereof, as are inconsistent with the provisions of this act, be, and the same are hereby, repealed.

SEC. 12. *And be it further enacted*, That, from the first day of the month of October until the first day of the month of April, in each and every year, the General Land Office and all the bureaus and offices therein, as well as all those in the Departments of the Treasury, War, Navy, State, and General Post Office, shall be open for the transaction of the public business at least eight hours in each and every day, except Sundays, and the twenty-fifth day of December; and from the first day of April until the first day of October, in each year, all the aforesaid offices and bureaus shall be kept open for the transaction of the public business at least ten hours in each and every day, except Sundays and the fourth day of July.

SEC. 13. *And be it further enacted*, That if any person shall apply to any register of any land office to enter any land whatever, and the said register shall knowingly and falsely inform the person so applying that the same has already been entered, and refuse to permit the person so applying to enter the same, such register shall be liable therefor to the person so applying for five dollars for each acre of land which the person so applying offered to enter, to be recovered by action of debt in any court of record having jurisdiction of the amount.

SEC. 14. *And be it further enacted*, That all and every of the officers whose salaries are hereinbefore provided for, are hereby prohibited from directly or indirectly purchasing, or in any way becoming interested in the purchase of, any of the public land; and in case of a violation of this section by such officer, and on proof thereof being made to the President of the United States, such officer, so offending, shall be forthwith removed from office.

Approved, July 4, 1836.

No. 33.—An Act to grant pre-emption rights to settlers on the public lands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That every actual settler of the public lands, being the head of a family, or over twenty-one years of age, who was in possession and a housekeeper, by personal residence thereon, at the time of the passage of this act, and for four months next preceding, shall be entitled to all the benefits and privileges of an act entitled "An act to grant pre-emption rights to settlers on the public lands,"* approved May twenty-ninth, eighteen hundred and thirty, and the said act is hereby revived and continued in force two years: *Provided,* That where more than one person may have settled upon and cultivated any one quarter section of land, each one of them shall have an equal share or interest in the said quarter section, but shall have no claim, by virtue of this act, to any other land: *And provided always,* That this act shall not be so construed as to give a right of pre-emption to any person or persons, in consequence of any settlement or improvement made before the extinguishment of the Indian title to the land on which such settlement or improvement was made, or to the lands lately acquired by treaty with the Miami tribe of Indians, in the State of Indiana, of which proclamation was made by the President of the United States on the twenty-second day of December, eighteen hundred and thirty-seven, or to any sections or fractions of sections of land included within the location of any incorporated town, or to the alternate sections to other alternate sections granted to the use of any canal, railroad, or other public improvement on the route of such canal, railroad, or other public improvement, or to any portions of public lands, surveyed or otherwise, which have been actually selected as sites for cities or towns, lotted into smaller quantities than eighty acres, and settled upon and occupied for the purposes of trade, and not of agricultural cultivation and improvement, or to any land specially occupied or reserved for town lots, or other purposes, by authority of the United States: *And provided further,* That nothing herein contained shall be construed to affect any of the selections of public lands for the purposes of education, the use of salt springs, or for any other purpose which may have been or may be made by any State, under existing laws of the United States: but this act shall not be so construed as to deprive those of the benefits of this act, who have inhabited, according to its provisions, certain fractions of the public lands within the land district of Palmyra, in the State of Missouri, which were reserved from sale in consequence of the surveys of Spanish and French grants, but are found to be without the lines of said grants. That before any person claiming the benefit of this law shall have a patent for the land which he may claim by having complied with its provisions, he shall make oath, before some person authorized by law to administer the same, which oath, with the certificate of the person administering it, shall be filed with the register of the proper land office when the land is applied for, and by said register sent to the office of the Commissioner of Public Lands, that he entered upon the land which he claims, in his own right, and exclusively for his own use and benefit, and that he has not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatever, by which the title which he might acquire from the Government of the United States should inure to the use or benefit of any one except himself, or to convey or transfer the said land, or the title which he may acquire to the same, to any other person or persons whatever, at

* See No. 22, and supplemental act, No. 40.

any subsequent time; and if such person claiming the benefit of this law as aforesaid, shall swear falsely in the premises, he shall be subject to all the pains and penalties for perjury, forfeit the money which he may have paid for the land, and all right and title to the said land, and any grant or conveyance which he may have made in pursuance of such agreement or contract as aforesaid, shall be void, except in the hands of a purchaser in good faith, for a valuable consideration without notice. And the certificate which shall be filed with the Commissioner, as aforesaid, shall be taken to be conclusive evidence that the oath was legally administered: *And provided further*, That it shall be the duty of the President of the United States to cause to be reserved from sale or entry, under the provisions of this or any other law of the United States, any tract or tracts of land reserved to any Choctaw, under the provisions of the treaty of Dancing Rabbit creek, of one thousand eight hundred and thirty, and also to reserve from sale or entry a sufficient quantity of the lands acquired by said treaty, upon which no such settlement or improvement has been made, as would entitle the settler or improver to a right of pre-emption under this act, to satisfy the claims of such Indians as may have been entitled to reservations under the said treaty, and whose lands may have been sold by the United States, on account of any default, neglect, or omission of duty, on the part of any officer of the United States; such reservation from sale to continue until the claims to reservations under said treaty shall be investigated by the board of commissioners appointed for that purpose, and their report finally acted on by Congress.

Approved, June 22, 1838.

No. 34.—A Resolution relating to the public revenue and dues to the Government.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall not be lawful for the Secretary of the Treasury to make or to continue in force any general order which shall create any difference between the different branches of revenue, as to the money or medium of payment in which debts or dues accruing to the United States, may be paid.

Approved, May 31, 1838.

No. 35.—An Act to repeal the second section of "An act to extend the time for locating Virginia military land warrants and returning surveys thereon to the General Land Office," approved July seventh, eighteen hundred and thirty-eight.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the second section of "An act to extend the time for locating Virginia military land warrants and returning surveys thereon to the General Land Office," approved July seventh, eighteen hundred and thirty-eight, be, and the same is hereby repealed.

Approved, March 3, 1839.

No. 36.—An Act making a donation of land to the Territory of Iowa, for the purpose of erecting public buildings thereon.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be, and hereby is, appropriated and granted to the Territory of Iowa, one entire section of land, of any of the surveyed public lands in said Territory, for the purpose of erecting thereon the public buildings for the use of the Executive and Legislative departments of the Government of the said Territory: *Provided,* That the said section of land shall be selected under the authority of the Territorial Legislature, the seat of Government located thereon, and notice of said selection officially returned to the register of the land office in the district in which the land is situated within one year from the passing of this act: *And provided further,* That nothing herein contained shall authorize the selection of the sixteenth section in any township reserved for the use of schools, nor of any lot reserved for public purposes; and that in the selection to be made as aforesaid, no pre-existing improvement or right to pre-emption recognized by law, shall be prejudiced thereby.

SEC. 2. *And be it further enacted,* That if, at the time of the selection of the section of land to be made as aforesaid, the contiguous sections thereto have not been made subject to public sale, or being so subject have not been sold at public sale or by private entry, then each and every section contiguous to said selected section, and not so sold, shall be thereafter reserved and withheld from sale in any manner, until the further order of Congress thereon. But nothing herein expressed shall be construed to restrain the said Territory of Iowa, after appropriating a sufficient quantity of land within said selected section for the site and accommodation of the public buildings, from selling and disposing of the residue of said section in lots or otherwise, for the use of said Territory, in the erection and completion of said buildings.

Approved, March 3, 1839.

No. 37.—An Act for the relief of the Brothertown Indians, in the Territory of Wisconsin.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the township of land containing twenty-three thousand and forty acres, lying on the east side of Winnebago lake, in the territory of Wisconsin, which, by the proviso of a treaty made with the Menomonie Indians on the seventeenth February, eighteen hundred and thirty-one, and ratified on the ninth July, 1832, was reserved for the use of the Brotherton or Brothertown Indians, and which by a subsequent treaty with the Menomonie tribe, bearing date 27th October, 1832, and ratified 13th March, 1833, was further secured to the said Brothertown Indians, may be partitioned and divided among the different individuals composing said tribe of Brothertown Indians, and may be held by them separately and severally in fee simple, after such division shall have been made in the manner hereafter mentioned.

SEC. 2. *And be it further enacted,* That, for the purpose of making partition and division of said lands among the individuals of said tribe of Brothertown Indians, a board of commissioners shall be constituted, to

consist of five of the principal or head men of said tribe, a majority of whom shall constitute a quorum to do business, whose duty it shall be to make a just and fair partition and division of said lands among the members of said tribe, or among such of them as, by the laws and customs and regulations of said tribe, are entitled to the same, and in such proportions and in such manner as shall be consistent with equity and justice, and in accordance with the existing laws, customs, usages, or agreements of said tribe.

SEC. 3. *And be it further enacted*, That, for the purpose of electing or choosing said board of commissioners, a meeting of said tribe shall be held at their church, or principal place, on the reservation of land aforesaid, on the first Monday in July next, at which all the male members of said tribe over the age of twenty-one years shall be allowed to vote for such commissioners; and the said five commissioners shall then and there be chosen or elected by the said tribe, by a majority of the whole number of such voters then present. And the judge of the district in which said lands are situated (or in his absence the register of the land office at Green Bay, or the commanding officer of the United States troops at Fort Howard) shall attend at the time and place aforesaid, and preside at said meeting, superintend the said election, and see that the proceedings are fairly conducted: and the said presiding officer may, in his discretion, prescribe whether the said election shall be by ballot or viva voce; and shall in other respects cause the proceedings to be conducted in such manner as to ensure a fair and proper choice or election; and after the said commissioners shall have been so chosen or elected, the said presiding officer shall immediately certify that fact, setting forth the names of the commissioners who shall be elected, and shall make two copies of said certificate, one of which he shall file in the office of the register of the land district at Green Bay, and the other he shall transmit by mail to the President of the United States.

SEC. 4. *And be it further enacted*, That after the said commissioners shall have been elected or chosen as above prescribed, and as soon thereafter as conveniently may be, they shall proceed to make partition and division of all the lands aforesaid among the individual members of said tribe, or among such of them, as, by the laws, customs, usages, or agreements of said tribe are justly entitled to the same, and in such way and manner, and upon such principles and in such proportions as shall be agreeable to equity and justice, and consistent with the laws, usages, customs, and agreements of said tribe: *Provided however*, That the buildings and improvements, and the farms on which the same are situated, which are now held or possessed in severalty by the members of said tribe, shall, so far as the same can consistently be done, be allotted or apportioned to the present occupants; and that no person or individual of said tribe shall be dispossessed or deprived of the improvements or land which they now occupy, unless it shall be found by the said commissioners that such person or persons are in the possession of and occupying more land than they are justly entitled to, and then the overplus may be apportioned to others.

SEC. 5. *And be it further enacted*, That after the said commissioners shall have made such partition and division as aforesaid, they shall make, or cause to be made, a full report of their proceedings in the premises, setting forth the name of each person to whom they have apportioned any part of said land, the quantity apportioned or allotted to each, with the metes and bounds, or other definite description of each several piece or parcel of land; and they shall accompany the said report with a fair and accurate map of the whole, showing the divisions and partitions aforesaid; which report and map, or a copy thereof, shall be deposited with the town clerk of said

tribe, on or before the first day of October next, and shall remain open for inspection to all, for the space of twenty days thereafter; and if any member or members of said tribe shall object to the partition or division so made by the said commissioners, or shall deem himself or themselves aggrieved thereby, he or they may, within ten days thereafter, give notice thereof to the said commissioners, who shall, within twenty days thereafter, meet to hear and determine such grievances, and take testimony if necessary; and after such hearing, shall have power to alter or modify such partition, if, in their judgment, any alteration or modification is necessary, in order to do equal and exact justice to all parties in interest.

SEC. 6. *And be it further enacted*, That, after the said report shall be finally completed, the commissioners shall cause three copies of the said report, and of the map accompanying the same, as finally agreed upon and settled, to be made and signed by said commissioners, one copy of which shall be deposited in the office of the secretary of said Territory, one copy in the office of the clerk of the county within which said lands are situated, and the other shall be transmitted to the President of the United States, who shall thereupon cause patents to be issued to the several individuals named in said report, for the lands so apportioned to them respectively, by which the said persons shall be authorized to hold the said lands in fee simple to themselves and their heirs and assigns.

SEC. 7. *And be it further enacted*, That the said report and map shall be filed with the secretary of said Territory, and in the clerk's office of said county, and shall also be transmitted to the President on or before the first day of January next; and after the same shall have been filed and transmitted to the President, as aforesaid, the said Brothertown Indians, and each and every of them, shall then be deemed to be, and from that time forth are hereby declared to be, citizens of the United States to all intents and purposes, and shall be entitled to all the rights, privileges, and immunities of such citizens, and shall, in all respects, be subject to the laws of the United States and of the Territory of Wisconsin, in the same manner as other citizens of said Territory; and the jurisdiction of the United States and of said Territory shall be extended over the said township or reservation now held by them in the same manner as over other parts of said Territory; and their rights as a tribe or nation, and their power of making or executing their own laws, usages, or customs, as such tribe, shall cease and determine: *Provided however*, That nothing in this act shall be so construed as to deprive them of the right to any annuity now due to them from the State of New York or the United States, but they shall be entitled to receive any such annuity in the same manner as though this act had not been passed.

Approved, March 3, 1839.

No. 38.—An Act to define and establish the eastern boundary line of the Territory of Iowa.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the middle or centre of the main channel of the river Mississippi shall be deemed, and is hereby declared, to be the eastern boundary line of the Territory of Iowa, so far or to such extent as the said Territory is bounded eastwardly by or upon said river: *Provided however*, That the said Territory of Iowa shall

have concurrent jurisdiction upon the said Mississippi river with any other conterminous State or Territory so far or to such extent as the said river shall form a common boundary between the aforesaid Territory of Iowa and any other such conterminous State or Territory.

Approved, March 3, 1839.

No. 39.—An Act to revive an act authorizing certain soldiers in the late war to surrender the bounty lands drawn by them and to locate others in lieu thereof, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act of the twenty-second of May, one thousand eight hundred and twenty-six, entitled "An act authorizing certain soldiers in the late war to surrender the bounty lands drawn by them, and to locate others in lieu thereof," be, and the same is hereby, revived and continued in force for the term of five years; and the provisions of the above recited act shall be, and are hereby, extended to those having like claims in the States of Illinois and Missouri.

Approved, May 27, 1840.

No. 40.—An Act supplemental to the act entitled "An act to grant pre-emption rights to settlers on the public lands," approved June twenty-second, eighteen hundred and thirty-eight.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in all cases where a settler on the public lands may reside, or have his dwelling-house upon one quarter section, and cultivate land on another and different quarter section, such settler may make his election under the act to which this is a supplement, to enter either of said quarter sections, or legal sub-divisions of each, so as not to exceed one quarter section in all.

SEC. 2. *And be it further enacted,* That in all cases where an individual may have made an improvement on the public land, and had afterward leased or rented such improvement to another person, who was in possession of the same on the twenty-second of June, eighteen hundred and thirty-eight, and for the period of four months next preceding, or when the lessor and lessee, together, occupied such improvement during said four months, the person who made such improvement, and so rented or leased the same, shall be entitled to the right of pre-emption, notwithstanding he may have been out of possession of his improvement during said four months, or any part thereof.

SEC. 3. *And be it further enacted,* That every settler on the public lands, which were not surveyed at the passage of the act to which this is a supplement, and who, since the survey of such public lands has been ascertained to have resided at the date of said act, and for four months preceding, on a sixteenth section, set apart for the support of schools in any township, shall be entitled to enter at the minimum price any other quarter section of the public lands lying in the same land district, to which no other person has the right of pre-emption, on making satisfactory proof

* See No. 33.

of his or her residence as aforesaid on such sixteenth section, before the register and receiver of the land office of said district.

SEC. 4. *And be it further enacted*, That every person who may have been a settler, within the meaning of the act to which this is a supplement, on any public land before its selection by any State for the purposes of a seminary of learning, under any act of Congress authorizing such selection, on satisfactory proof of the facts before the register and receiver of the district in which his improvements were situated, shall be permitted to enter at the minimum price, any other quarter section lying in the same land district, to which no other person has the right of pre-emption.

SEC. 5. *And be it further enacted*, That the "Act to grant pre-emption rights to settlers on the public lands," approved, June twenty-second, eighteen hundred and thirty-eight, be, and the same is hereby, continued in full force till the twenty-second day of June, eighteen hundred and forty-two; and the right of pre-emption, under its provisions, shall be, and hereby is, extended to all settlers on the public lands at the date of this act, with the same exceptions, whether general or special, and subject to all the limitations and conditions contained in the above-recited act, and with the explanatory provisions of the preceding sections of this act; and nothing in the last proviso of the act of the twenty-second of June, eighteen hundred and thirty-eight, shall be so construed as to defeat any right of pre-emption accruing under said act, or under this act, or under any preceding act of Congress, nor shall said pre-emption claims be defeated by any contingent Choctaw location.

Approved, June 1, 1840.

No. 41.—An Act to authorize registers and receivers to administer oaths, required to be taken by purchasers of public land.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the register, or receiver, of any of the land offices of the United States shall be authorized, and it shall be the duty of said officers, to administer any oath or oaths, which now are or hereafter may be required by law, in connection with the entry or purchase of any tract of land; and, if any person shall, knowingly and wilfully, swear falsely to any fact contained in any oath or affidavit so taken or made, he or she shall be deemed and held guilty of perjury, and shall, on conviction, suffer all the pains, penalties, and disabilities, which attach to said crime in other cases of perjury under the laws of the United States: *Provided*, That such land officers shall not, directly or indirectly, charge or receive any compensation for administering such oaths.

Approved, June 12, 1840.

No. 42.—An Act for the discontinuance of the office of Surveyor General in the several districts, so soon as the surveys therein can be completed, for abolishing land offices under certain circumstances and for other purposes.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be the duty of the

* Amended, see Nos. 214, 265, and 303.

Secretary of the Treasury to take all the necessary measures for the completion of the surveys, in the several districts for which surveyors general have been, or may be, appointed, at the earliest periods compatible with the purposes contemplated by law; and whenever the surveys and records of any such district or State shall be completed, the surveyor general thereof shall be required to deliver over to the Secretary of State of the respective States, including such surveys, or such other officer as may be authorized to receive them, all the field notes, maps, records, and other papers, appertaining to land titles, within the same; and the office of surveyor general, in every such district, shall thereafter cease and be discontinued.

SEC. 2. *And be it further enacted*, That whenever the quantity of public land remaining unsold in any land district shall be reduced to a number of acres less than one hundred thousand, it shall be the duty of the Secretary of the Treasury to discontinue the land office of such district; and if any land, in any such district shall remain unsold at the time of the discontinuance of a land office, the same shall be subject to sale at some one of the existing land offices most convenient to the district in which the land office shall have been discontinued, of which the Secretary of the Treasury shall give notice.

Approved, June 12, 1840.

No. 43.—An Act to annex a certain tract of land to the Coosa land district, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That such part of township twenty-two, of range two, east, northern survey, State of Alabama, as lies east of the Coosa river, and was ceded to the United States by the Creek nation of Indians, by a treaty concluded on the ninth day of August eighteen hundred and fourteen, be, and the same is hereby annexed to the Coosa land district; and all surveys, sales, and other proceedings heretofore had in reference to said tract hereby annexed as aforesaid, shall be as valid as they would have been had the same, at the time such proceedings were had, formed a part of said district, and no farther.

Approved, July 20, 1840.

No. 44.—An Act to amend an act entitled "An act to authorize the State of Tennessee to issue grants and perfect titles to certain lands therein described, and to settle the claims to the vacant and unappropriated lands within the same," passed the eighteenth day of April, one thousand eight hundred and six.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the State of Tennessee be, and hereby is, constituted the agent of the Government of the United States, with full power and authority to sell and dispose of the vacant, unappropriated, and refuse lands, within the limits of said State, lying south and west of the line commonly called the Congressional Reservation line,

* See supplementary act, August 7, 1846, No. 115.

and described in the act to which this is an amendment; subject, nevertheless, to the following conditions and limitations, to wit:

First. The State of Tennessee shall satisfy all legal and bona fide claims of North Carolina upon said lands, by making provision, by law, that the holders of land warrants under the authority of the State of North Carolina, may locate the same upon the lands not previously located upon, or claimed as occupant pre-emptions, within one year from the time that the State of Tennessee shall make provision for carrying this act into effect; and in default of such location within the said term of one year, the said warrants may be satisfied by the payment of twelve and a half cents per acre for the number of acres contained in each warrant, to be paid out of the proceeds of the sale of said land: *Provided*, The holders shall present such warrant to the proper authorities for payment of the same within two years from the action of the Legislature of the State of Tennessee hereon: *And provided furthermore*, That if the said warrants shall not be satisfied, either by the location of land within one year, or their presentation for payment within two years as aforesaid, the holders shall be forever barred of all further claim or right to demand the same.

Second. In entering, purchasing, and disposing of said lands, or obtaining grants of the same, all and every person or persons, the legal representative of such person or persons, and the rightful assignee of such person or persons, as are entitled to the right of occupancy and pre-emption according to the laws of the State of Tennessee, shall have the preference in the entry or purchase of their occupant and pre-emption rights, at the price of twelve and a half cents per acre, not exceeding two hundred acres each.

Third. After satisfying the claims and rights aforesaid, the State of Tennessee shall offer for sale the rest and residue of said lands, in such manner, in such quantities, and by such description, as may be most convenient; and, for the full term of three years from and after the time herein allowed for the location of North Carolina land warrants, may sell and dispose of, and perfect titles to the same, at a price not less than twelve and a half cents per acre. And so much of the said land as may remain unsold at the expiration of the said term of three years, shall be disposed of as aforesaid, within the further term of three years, at such price per acre as it may bring in open market: *Provided*, That the proceeds of the sale of said lands, over and above so much thereof as shall be necessary to the satisfaction of said North Carolina claims, shall be accounted for and paid over by the State of Tennessee to the United States in the month of January annually.

Approved, February 18, 1841.

No. 45.—An Act to confirm to the State of Indiana the land selected by her for that portion of the Wabash and Erie canal which lies between the mouth of the Tippecanoe river and Terre Haute, and for other purposes.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be, and there hereby is, confirmed to the State of Indiana, the land selected by her, under the provisions of the act of second of March, eighteen hundred and twenty-seven, entitled "An act to grant a certain quantity of land to the State of Indiana, for the purpose of aiding the State in opening a canal to connect

* Amended 9th May, 1848, No. 136; and see also act of March 3, 1845.

the waters of the Wabash with those of Lake Erie," for that portion of the canal between the mouth of the Tippecanoe river and Terre Haute, as returned by said State to the Secretary of the Treasury.

SEC. 2. *And be it further enacted*, That should any of said lands, at the time of their selection and location by the State, have been subject to any right of pre-emption, or other legal incumbrance, the State of Indiana shall be, and she hereby is, authorized to select, of any lands subject to private entry in said State, other lands in lieu of so much thereof as may be so incumbered, and, upon return of a description of the same to the Secretary of the Treasury, the same shall be, and hereby is, confirmed to the State: *Provided*, That no more land shall be selected, or hereby confirmed, than a quantity equal to one-half of five sections in width on each side of said canal, from the mouth of the Tippecanoe river to Terre Haute.

Approved, February 27, 1841.

No. 46.—An Act to confirm land patents.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all patents for public lands, which have been issued from the General Land Office since the passing of the act, entitled "An act for the establishment of a General Land Office in the department of the Treasury," passed on the twenty-fifth day of April, one thousand eight hundred and twelve, in the name of the President of the United States, instead of being "in the name of the United States," as prescribed in the eighth section of said act: and all patents for public lands, which have been issued from the said General Land Office since the passing of the act entitled "An act to reorganize the General Land Office," passed the fourth day of July, one thousand eight hundred and thirty-six, and which have been countersigned by the recorder of the General Land Office, or other person acting in his stead, instead of being countersigned by the Commissioner of the General Land Office, as prescribed in the act of the twenty-fifth day of April one thousand eight hundred and twelve; and all patents which have been issued from said General Land Office since the passing of the act entitled "An act prescribing the mode by which patents for public lands shall be signed and executed," passed the second day of March, one thousand eight hundred and thirty-three,* and which have been subscribed by a secretary duly appointed, pursuant to the provisions of said act, with the printed or written name of the President prefixed to the personal signature of such secretary, in the execution of such patents, notwithstanding the name of the President may not have been written personally by the secretary, shall be deemed, taken, and held, good and valid patents in law, and shall have all the force and effect to pass from the United States to the patentee or patentees named in such patents, respectively, their heirs, executors, administrators, and assigns, the lands described therein, as though, in each and all the respects before enumerated, the patents, in their form and manner of execution, had conformed to the requirements of law.

SEC. 2. *And be it further enacted*, That from and after the passing of this act, it shall be the duty of the recorder of the General Land Office, in addition to the duties now required of him by law, to countersign all patents issued from said office, instead of the same being countersigned by the

* See No. 26.

Commissioner, as required by the eighth section of the act entitled "An act for the establishment of a General Land Office in the department of the Treasury," passed the twenty-fifth day of April, one thousand eight hundred and twelve.

Approved, March 3, 1841.

No. 47.—An Act further to extend the time for locating Virginia military land warrants, and returning surveys thereon to the General Land Office.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first section of the act entitled "An act to extend the time for locating Virginia military land warrants, and returning surveys thereon to the General Land Office," approved July seventh, eighteen hundred and thirty-eight, as to all warrants issued prior to the tenth day of August, eighteen hundred and forty, and no others, be, and the same is hereby, revived, and to continue in force until the first day of January, eighteen hundred and forty-four.

Approved, August 19, 1841.

No. 48.—An Act to appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the thirty-first day of December, in the year of our Lord one thousand eight hundred and forty-one, there be allowed and paid to each of the States of Ohio, Indiana, Illinois, Alabama, Missouri, Mississippi, Louisiana, Arkansas, and Michigan, over and above what each of the said States is entitled to by the terms of the compacts entered into between them and the United States, upon their admission into the Union, the sum of ten per centum upon the nett proceeds of the sales of the public lands, which, subsequent to the day aforesaid, shall be made within the limits of each of said States respectively: *Provided,* That the sum so allowed to the said States, respectively, shall be in no wise affected or diminished on account of any sums which have been heretofore, or shall be hereafter, applied to the construction or continuance of the Cumberland road, but that the disbursements for the said road shall remain, as heretofore, chargeable on the two per centum fund provided for by compacts with several of the said States.

SEC. 2. *And be it further enacted,* That after deducting the said ten per centum, and what, by the compacts aforesaid, has heretofore been allowed to the States aforesaid, the residue of the nett proceeds, which nett proceeds shall be ascertained by deducting from the gross proceeds all the expenditures of the year for the following objects: salaries and expenses on account of the General Land Office; expenses for surveying public lands; salaries and expenses in the surveyor general's offices; salaries, commissions, and allowances to the registers and receivers; the five per centum to new States, of all the public lands of the United States, wherever situated, which shall be sold subsequent to the said thirty-first day of December, shall be divided among the twenty-six States of the Union and the District of Columbia, and the Territories of Wisconsin, Iowa, and Florida, according to their

respective federal representative population as ascertained by the last census, to be applied by the Legislatures of the said States to such purposes as the said Legislatures may direct: *Provided*, That the distributive share to which the District of Columbia shall be entitled, shall be applied to free schools, or education in some other form, as Congress may direct: *And provided also*, That nothing herein contained shall be construed to the prejudice of future applications for a reduction of the price of the public lands, or to the prejudice of applications for a transfer of the public lands, on reasonable terms, to the States within which they lie, or to make such future disposition of the public lands, or any part thereof, as Congress may deem expedient.

SEC. 3. *And be it further enacted*, That the several sums of money received in the Treasury as the nett proceeds of the sales of the public lands shall be paid at the Treasury half yearly on the first day of January and July in each year, during the operation of this act, to such person or persons as the respective Legislatures of the said States and Territories, or the Governors thereof, in case the Legislatures shall have made no such appointment, shall authorize and direct to receive the same.

SEC. 4. *And be it further enacted*, That any sum of money, which at any time may become due, and payable to any State of the Union, or to the District of Columbia, by virtue of this act, as the portion of the said State or District, of the proceeds of the sales of the public lands, shall be first applied to the payment of any debt, due, and payable from the said State or District, to the United States: *Provided*, That this shall not be construed to extend to the sums deposited with the States under the act of Congress of twenty-third June, eighteen hundred and thirty-six, entitled "an act to regulate the deposits of the public money," nor to any sums apparently due to the United States as balances of debts growing out of the transactions of the Revolutionary war.

SEC. 5. *And be it further enacted*, That this act shall continue and be in force until otherwise provided by law, unless the United States shall become involved in war with any foreign Power, in which event, from the commencement of hostilities, this act shall be suspended during the continuance of such war: *Provided nevertheless*, That if, prior to the expiration of this act, any new State or States shall be admitted into the Union, there be assigned to such new State or States, the proportion of the proceeds accruing after their admission into the Union, to which such State or States may be entitled, upon the principles of this act, together with what such State or States may be entitled to by virtue of compacts to be made on their admission into the Union.*

SEC. 6. *And be it further enacted*, That there shall be annually appropriated for completing the surveys of said lands, a sum not less than one hundred and fifty thousand dollars; and the minimum price at which the public lands are now sold at private sale shall not be increased, unless Congress shall think proper to grant alternate sections along the line of any canal or other internal improvement, and at the same time to increase the minimum price of the sections reserved; and in case the same shall be increased by law, except as aforesaid, at any time during the operation of this act, then so much of this act as provides that the nett proceeds of the sales of the public lands shall be distributed among the several States, shall, from and after the increase of the minimum price thereof, cease and become utterly null and of no effect, any thing in this act to the contrary notwithstanding: *Provided*, That if, at any time during the existence of this act, there shall be an imposition of duties on imports inconsistent with the

* See explanatory act of 13th June, 1848.

provisions of the act of March second one thousand eight hundred and thirty-three, entitled, "An act to modify the act of the fourteenth of July one thousand eight hundred and thirty-two, and all other acts imposing duties on imports," and beyond the rate of duty fixed by that act, to wit: twenty per cent. on the value of such imports, or any of them, then the distribution provided in this act shall be suspended and shall so continue until this cause of its suspension shall be removed, and when removed, if not prevented by other provisions of this act, such distribution shall be resumed.

SEC. 7. *And be it further enacted*, That the Secretary of the Treasury may continue any land district in which is situated the seat of government of any one of the States, and may continue the land office in such district, notwithstanding the quantity of land unsold in such district may not amount to one hundred thousand acres, when, in his opinion, such continuance may be required by public convenience, or in order to close the land system in such State at a convenient point, under the provisions of the act on that subject, approved twelfth June, one thousand eight hundred and forty.

SEC. 8. *And be it further enacted*, That there shall be granted to each State specified in the first section of this act five hundred thousand acres of land for purposes of internal improvement: *Provided*, that to each of the said States which has already received grants for said purposes, there is hereby granted no more than a quantity of land which shall, together with the amount such State has already received as aforesaid, make five hundred thousand acres, the selections in all of the said States, to be made within their limits respectively in such manner as the Legislature thereof shall direct; and located in parcels conformably to sectional divisions and subdivisions, of not less than three hundred and twenty acres in any one location, on any public land except such as is or may be reserved from sale by any law of Congress or proclamation of the President of the United States, which said locations may be made at any time after the lands of the United States in said States respectively, shall have been surveyed according to existing laws. And there shall be and hereby is, granted to each new State that shall be hereafter admitted into the Union, upon such admission, so much land as, including such quantity as may have been granted to such State before its admission, and while under a Territorial Government, for purposes of internal improvement as aforesaid, as shall make five hundred thousand acres of land, to be selected and located as aforesaid.

SEC. 9. *And be it further enacted*, That the lands herein granted to the States above named shall not be disposed of at a price less than one dollar and twenty-five cents per acre, until otherwise authorized by a law of the United States; and the nett proceeds of the sales of said lands shall be faithfully applied to objects of internal improvement within the States aforesaid, respectively, namely: Roads, railways, bridges, canals and improvement of water-courses, and draining of swamps; and such roads, railways, canals, bridges and water-courses, when made or improved, shall be free for the transportation of the United States mail, and munitions of war, and for the passage of their troops, without the payment of any toll whatever.

SEC. 10. *And be it further enacted*, That from and after the passage of this act, every person being the head of a family, or widow, or single man, over the age of twenty-one years, and being a citizen of the United States, or having filed his declaration of intention to become a citizen, as required by the naturalization laws, who since the first day of June, A. D. eighteen

hundred and forty, has made or shall hereafter make a settlement in person on the public lands to which the Indian title had been at the time of such settlement extinguished, and which has been, or shall have been, surveyed prior thereto, and who shall inhabit and improve the same, and who has or shall erect a dwelling thereon, shall be, and is hereby, authorized to enter with the register of the land office for the district in which such land may lie, by legal subdivisions, any number of acres not exceeding one hundred and sixty, or a quarter section of land, to include the residence of such claimant, upon paying to the United States the minimum price of such land, subject, however, to the following limitations and exceptions: No person shall be entitled to more than one pre-emptive right by virtue of this act; no person who is the proprietor of three hundred and twenty acres of land in any State or Territory of the United States, and no person who shall quit or abandon his residence on his own land to reside on the public land in the same State or Territory, shall acquire any right of pre-emption under this act; no lands included in any reservation, by any treaty, law, or proclamation of the President of the United States, or reserved for salines, or for other purposes; no lands reserved for the support of schools, nor the lands acquired by either of the two last treaties with the Miami tribe of Indians in the State of Indiana, or which may be acquired of the Wyandot tribe of Indians in the State of Ohio, or other Indian reservation to which the title has been or may be extinguished by the United States at any time during the operation of this act; no sections of land reserved to the United States alternate to other sections granted to any of the States for the construction of any canal, railroad, or other public improvement; no sections or fractions of sections included within the limits of any incorporated town; no portions of the public lands which have been selected as the site for a city or town; no parcel or lot of land actually settled and occupied for the purposes of trade and not agriculture; and no lands on which are situated any known salines or mines, shall be liable to entry under and by virtue of the provisions of this act. And so much of the proviso of the act of twenty-second of June, eighteen hundred and thirty-eight or any order of the President of the United States, as directs certain reservations to be made in favor of certain claims under the treaty of Dancing-rabbit creek, be, and the same is hereby, repealed: *Provided*, That such repeal shall not affect any title to any tract of land secured in virtue of said treaty.

SEC. 11. *And be it further enacted*, That when two or more persons shall have settled on the same quarter section of land, the right of pre-emption shall be in him or her who made the first settlement, provided such persons shall conform to the other provisions of this act; and all questions as to the right of pre-emption arising between different settlers shall be settled by the register and receiver of the district within which the land is situated, subject to an appeal to and a revision by the Secretary of the Treasury of the United States.

SEC. 12. *And be it further enacted*, That prior to any entries being made under and by virtue of the provisions of this act, proof of the settlement and improvement thereby required, shall be made to the satisfaction of the register and receiver of the land district in which such lands may lie, agreeably to such rules as shall be prescribed by the Secretary of the Treasury, who shall each be entitled to receive fifty cents from each applicant for his services, to be rendered as aforesaid; and all assignments and transfers of the right hereby secured, prior to the issuing of the patent, shall be null and void.

SEC. 13. *And be it further enacted*, That before any person claiming

the benefit of this act shall be allowed to enter such lands, he or she shall make oath before the receiver or register of the land district in which the land is situated, (who are hereby authorized to administer the same,) that he or she has never had the benefit of any right of pre-emption under this act; that he or she is not the owner of three hundred and twenty acres of land in any State or Territory of the United States, nor hath he or she settled upon and improved said land to sell the same on speculation, but in good faith to appropriate it to his or her own exclusive use or benefit; and that he or she has not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which he or she might acquire from the Government of the United States, should enure in whole or in part, to the benefit of any person except himself or herself; and if any person taking such oath shall swear falsely in the premises, he or she shall be subject to all the pains and penalties of perjury, and shall forfeit the money which he or she may have paid for said land, and all right and title to the same; and any grant or conveyance which he or she may have made, except in the hands of bona fide purchasers, for a valuable consideration, shall be null and void. And it shall be the duty of the officer administering such oath to file a certificate thereof in the public land office of such district, and to transmit a duplicate copy to the General Land Office, either of which shall be good and sufficient evidence that such oath was administered according to law.

SEC. 14. *And be it further enacted*, That this act shall not delay the sale of any of the public lands of the United States beyond the time which has been, or may be, appointed by the proclamation of the President, nor shall the provisions of this act be available to any person or persons who shall fail to make the proof and payment, and file the affidavit required before the day appointed for the commencement of the sales as aforesaid.

SEC. 15. *And be it further enacted*, That whenever any person has settled or shall settle and improve a tract of land, subject at the time of settlement to private entry, and shall intend to purchase the same under the provisions of this act, such person shall in the first case, within three months after the passage of the same, and in the last within thirty days next after the date of such settlement, file with the register of the proper district a written statement, describing the land settled upon, and declaring the intention of such person to claim the same under the provisions of this act; and shall, where such settlement is already made, within twelve months after the passage of this act, and where it shall hereafter be made, within the same period after the date of such settlement, make the proof, affidavit, and payment herein required; and if he or she shall fail to file such written statement as aforesaid, or shall fail to make such affidavit, proof, and payment, within the twelve months aforesaid, the tract of land so settled and improved shall be subject to the entry of any other purchaser.

SEC. 16. *And be it further enacted*, That the two per cent. of the nett proceeds of the lands sold, or that may hereafter be sold by the United States in the State of Mississippi, since the first day of December, eighteen hundred and seventeen, and by the act entitled "An act to enable the people of the western part of the Mississippi Territory to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States," and all acts supplemental thereto reserved for the making of a road or roads leading to said State, be, and the same is hereby relinquished to the State of Mississippi, payable in two equal instalments; the first to be paid on the first of May eighteen hundred and forty-two, and the other on the first of May eighteen

hundred and forty-three, so far as the same may then have accrued, and quarterly, as the same may accrue, after said period: *Provided*, That the Legislature of said State shall first pass an act, declaring their acceptance of said relinquishment in full of said fund, accrued and accruing, and also embracing a provision, to be unalterable without the consent of Congress, that the whole of said two per cent. fund shall be faithfully applied to the construction of a railroad, leading from Brandon, in the State of Mississippi, to the eastern boundary of said State, in the direction, as near as may be of the towns of Selma, Cahaba, and Montgomery in the State of Alabama.

SEC. 17. *And be it further enacted*, That the two per cent. of the nett proceeds of the lands sold by the United States, in the State of Alabama, since the first day of September eighteen hundred and nineteen, and reserved by the act entitled "An act to enable the people of the Alabama Territory to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States" for the making of a road or roads leading to the said State, be, and the same is hereby relinquished to the said State of Alabama, payable in two equal instalments, the first to be paid on the first day of May eighteen hundred and forty-two, and the other on the first day of May, eighteen hundred and forty-three, so far as the same may then have accrued, and quarterly, as the same may thereafter accrue: *Provided*, That the Legislature of said State shall first pass an act declaring their acceptance of said relinquishment, and also embracing a provision, to be unalterable without the consent of Congress, that the whole of said two per cent. fund shall be faithfully applied, under the direction of the Legislature of Alabama, to the connection, by some means of internal improvement, of the navigable waters of the Bay of Mobile with the Tennessee river, and to the construction of a continuous line of internal improvements from a point on the Chattahoochee river, opposite West Point, in Georgia, across the State of Alabama, in a direction to Jackson in the State of Mississippi.

*Approved, September 4, 1841.**

* ABSTRACT OF LAWS GRANTING PRE-EMPTION OF PUBLIC LANDS.—Purchasers under John Cleves Symmes. Act of March 2, 1799, ch. 34. Act of March 3, 1801, ch. 23. Act of May 1, 1802, ch. 44. Act of March 3, 1803, ch. 21, secs. 4, 5.(a)

Pre-emption of lands granted to persons erecting grist or saw-mills. Act of May 10, 1800, ch. 55, sec. 16.

Mississippi.—Act of March 3, 1803, ch. 27, sec. 3. Act of April 21, 1806, ch. 39, secs. 2, 7. Act of March 3, 1807, ch. 36, sec. 8. Act of April 22, 1826, ch. 28, sec. 5. Act of May 28, 1830, ch. 146, sec. 3.

Tennessee.—Act of April 18, 1806, ch. 31.

Ohio.—Act of April 21, 1806, ch. 39. Act of May 15, 1820, ch. 135.

Michigan.—Act of April 25, 1808, ch. 67, sec. 3.

Louisiana.—Act of February 15, 1811, ch. 14, sec. 5. Act of April 29, 1816, ch. 162. Act of March 3, 1819, ch. 86, sec. 4. Act of June 15, 1832, ch. 140. Act of June 28, 1834, ch. 125. Act of February 24, 1835, ch. 24.

Illinois.—Act of February 5, 1813, ch. 20. Act of April 26, 1816, ch. 101, sec. 6. Act of April 16, 1814, ch. 61, sec. 4. Act of February 27, 1815, ch. 63, secs. 3, 4.

Missouri.—Act of April 12, 1814, ch. 52, sec. 5. Act of March 3, 1819, ch. 86, secs. 2, 3. Act of April 29, 1816, ch. 162. Act of July 9, 1832, ch. 180, secs. 3.

Arkansas.—Act of May 26, 1824, ch. 154. Further time given for filing of claims to pre-emption rights. Act of July 14, 1832, ch. 246.

Alabama.—Act of April 22, 1826, ch. 28.

Florida.—Act of April 22, 1826, ch. 28.

Settlers on public land. Act of May 29, 1830, ch. 208. Act of July 14, 1832, ch. 246. Act of March 2, 1833, ch. 92. June 22, 1838, ch. 119.

(a) The chapters herein referred to are those of the Statutes at Large.

No. 49.—An Act to provide for the early disposition of the lands lying in the State of Alabama, acquired from the Cherokee Indians by the treaty of twenty-ninth of December, eighteen hundred and thirty-five.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all that part of the territory

Settlers in the Salt Lick Reservation, in Tennessee. Act of March 3, 1839, ch. 178. Supplement to the Act of June 22, 1838, ch. 119, to grant pre-emption rights to settlers on public lands. June 1, 1840, ch. 32.

An Act to appropriate the proceeds of the sales of public lands, and to grant pre-emption rights. September 4, 1841, ch. 16.

An Act to perfect the titles to lands south of the Arkansas river, held under New Madrid locations, and pre-emption rights, under the act of one thousand eight hundred and fourteen. March 1, 1843, ch. 50.

An Act to authorize the investigation of alleged frauds under the pre-emption laws, and for other purposes. March 3, 1843, ch. 86.

An Act for the relief of the citizens of towns upon the lands of the United States, under certain circumstances. May 23, 1844, ch. 17.

An Act granting a section of land for the improvement of Grant river, at the town of Potosi, in Wisconsin Territory. June 15, 1844, ch. 50.

An Act to confirm certain entries of land in the St. Augustine Land District, in the Territory of Florida, made under the pre-emption law of 22d June, 1838. June 15, 1844, ch. 74.

An Act to grant the right of pre-emption to actual settlers on the lands acquired by treaty from the Miami Indians in Indiana. August 3, 1846, ch. 77.

An Act providing for the adjustment of all suspended pre-emption land claims in the several States and Territories. August 3, 1846, ch. 78.

An Act to extend an act entitled "An act providing for the adjustment of all suspended pre-emption land claims in the several States and Territories," approved third August eighteen hundred and forty-six. July 17, 1848, ch. 101.

An Act to grant the right of pre-emption to certain purchasers and settlers on the "Maison Rouge Grant," in the event of the final adjudication of the title in favor of the United States. January 27, 1851, ch. 2.

An Act for the settlement of certain classes of "private land claims" within the limits of the "Baron De Bastrop Grant," and for allowing pre-emptions to certain actual settlers, in the event of the final adjudication of the title of the said De Bastrop in favor of the United States. March 3, 1851, ch. 26.

An Act to make land warrants assignable and for other purposes. March 22, 1852, ch. 19. This act authorizes the location of warrants on pre-emption claims.

An Act to grant to certain settlers on the Menomonee Purchase, North of Fox River, in the State of Wisconsin, the right of pre-emption. May 27, 1852, ch. 43.

An Act to protect actual settlers upon the land on the line of the Central Railroad and branches, by granting pre-emption rights. August 2, 1852, ch. 78.

An Act to extend pre-emption rights to certain lands therein mentioned. March 3, 1853, ch. 143.

An Act to provide for the survey of the public lands in California, the granting of pre-emption rights therein, and for other purposes. March 3, 1853, ch. 145.

An Act to revive and continue in force for a limited time the provisions of an act relative to suspended entries of public land. March 3, 1853, ch. 152.

An Act for the extension of the pre-emption privilege in the State of California. March 1, 1854, ch. 17.

An Act for the relief of settlers on lands reserved for rail-road purposes. March 27, 1854, ch. 25.

An Act to amend the act approved September twenty-seven, eighteen hundred and fifty, to create the Office of Surveyor General of the public lands in Oregon, etc., and also the act amendatory thereof, approved February nineteen [fourteenth] eighteen hundred and fifty-three. July 17, 1854, ch. 84.

An Act to establish the Offices of Surveyor-General of New Mexico, Kansas and Nebraska, to grant donations to actual settlers therein, and for other purposes. July 22, 1854, ch. 103.

An Act to graduate and reduce the price of the public lands, to actual settlers and cultivators. August 4, 1854, ch. 244.

An Act to extend the right of pre-emption over unsurveyed lands in Minnesota, and for other purposes. August 4, 1854, ch. 249.

acquired from the Cherokee Indians by the treaty of New Echota of twenty-ninth December, eighteen hundred and thirty-five, within the State of Alabama, which lies west of the line dividing ranges two and three east of the basis meridian of Huntsville, shall be added to and form a part of said district; and all the territory acquired by the said treaty within the said State not attached to the Huntsville district, as above described, shall be annexed to and form a part of the Coosa land district, in said State.

SEC. 2. *And be it further enacted*, That the land office for the Coosa land district, at present located at Mardisville, shall be removed to Lebanon, in the county of De Kalb.

Approved, March 4, 1842.

No. 50.—An Act to authorize the Governors of the States of Illinois, Arkansas and Missouri to cause to be selected the lands therein mentioned.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of the eighth section of the act entitled "An act to appropriate the proceeds of the sales of the public lands, and to grant pre-emptions," approved September fourth, eighteen hundred and forty-one, as provides that the selections of the grants of land made to the several States, therein mentioned, for the purposes of internal improvement, shall be made, respectively, in such manner as the Legislatures thereof shall direct, is so far modified as to authorize the Governors of the States of Illinois, Arkansas and Missouri to cause the selec-

An Act extending, in certain cases, the provisions of the act entitled "An act to extend pre-emption rights to certain land therein mentioned," approved March third eighteen hundred and fifty-three. March 2, 1855, ch. 134.

An Act to amend the act approved twenty-sixth August, eighteen hundred and fifty-two, entitled, "An act to reduce and define the boundaries of the Military Reserve at St. Peter's River, in the Territory of Minnesota," and for other purposes. March, 2, 1855, ch. 135.

An Act making appropriations for the service of the Post Office Department during the fiscal year ending the thirtieth of June, one thousand eight hundred and fifty-six. March 3, 1855, ch. 201.

An Act to revive and continue in force the provisions of the act of 1853, in relation to "suspended entries of public lands," and the act of 1846, in relation to "suspended pre-emption land claims." June 26, 1856, ch. 47.

An Act making appropriations for the service of the Post Office Department during the fiscal year ending the thirtieth of June eighteen hundred and fifty-eight, (sec. 12.) March 3, 1857, ch. 96.

A Resolution relative to sections sixteen and thirty-six, in the Territories of Minnesota, Kansas and Nebraska. March 3, 1857, p. 254, vol 11, Statutes at Large.

An Act to amend an act entitled "An act to authorize the President of the United States to cause to be surveyed the tract of land, in the Territory of Minnesota, belonging to the half-breeds or mixed bloods of the Dacotah or Sioux Nation of Indians, and for other purposes," approved seventeenth July eighteen hundred and fifty-four. May 19, 1858, ch. 43.

An Act for the relief of Isaac Drew and other settlers upon the public lands in the State of Wisconsin. May 24, 1858, ch. 45.

An Act for the relief of settlers on certain lands in the State of Illinois. June 11, 1858, ch. 146.

An Act to authorize settlers upon sixteenth and thirty-six(th) sections, who settled before the surveys of the public lands, to pre-empt their settlements. February 26, 1859, ch. 58.

An Act for the relief of certain settlers on the public lands in the State of Wisconsin. June 9, 1859, ch. 133.

tions to be made for those States without the necessity of convening the Legislatures thereof for that purpose.

Approved, March 19, 1842.

No. 51.—An Act to confirm certain entries of lands in the State of Louisiana, and to authorize the issuing of patents for the same.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the entries of the following described tracts of land permitted to be made by the register and receiver at Ouachita, in the land district north of Red river, in the State of Louisiana, to wit: Lot number five, of section thirty-eight, and lots numbers one, two, five, and six, of section forty-five, and lots numbers three and four, of section forty-five and lots numbers three, four, and five, of section forty-six, and lots numbers two, three, six, seven, eleven, twelve, thirteen, and fourteen, of section forty-eight, all said lots being in township number thirteen, of range number twelve east, in the said land district north of Red river, in the State of Louisiana, be, and the same are hereby, confirmed and declared to be good and valid; and patents shall issue thereon as in other cases of good and valid entries, and certificates of purchase, any law to the contrary notwithstanding.

Approved, April 14, 1842.

No. 52.—An Act relative to the act entitled, “An act granting lands to certain exiles from Poland,” approved, thirtieth June, eighteen hundred and thirty-four.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the acts now in force for the sale of the public lands, and granting pre-emption rights to actual settlers, be, and the same are hereby, declared to extend to, and include, the lands selected in townships forty-four, forty-five, and forty-six, north of the base line, range one east, of the third principal meridian, lying in the State of Illinois, by Lewis Clopicky, under color of the act entitled, “An act granting lands to certain exiles from Poland.” The said selections not having been made in pursuance of the provisions of said act, which act is hereby declared to be in full force, for the benefit of said Polish exiles.

Approved, April 14, 1842.

No. 53.—An Act to amend an act entitled “An act to carry into effect, in the States of Alabama and Mississippi, the existing compacts with those States with regard to the five per cent. fund and the school reservations.”

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of the second section of the act entitled “An act to carry into effect, in the States of Alabama and Mississippi, the existing compacts with those States in

regard to the five per cent. fund and the school reservations," as requires the land therein designated as reserved to the State of Mississippi for the use of schools to be selected, under the direction of the Secretary of the Treasury, "out of any public lands, remaining unsold, that shall have been offered at public sale within either of the land districts in said State of Mississippi, contiguous to said lands, within said State," ceded by the Chickasaws, be so amended that the said lands may be selected, under the direction of the Governor of said State of Mississippi, out of any public lands remaining unsold within either of the land districts in said State of Mississippi contiguous to the lands in said State ceded by the Chickasaw Indians.

Approved, June 13, 1842.

No. 54.—An Act confirming certain land claims in Louisiana.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the claims to lands within the land district of New Orleans, being numbers six, seven, eight, nine, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, thirty, thirty-four, thirty-five, thirty-eight, forty-seven, forty-eight, fifty-seven, fifty-nine, sixty, sixty-one and sixty-two, of the two reports of the register and receiver of said land district, dated fourteenth of December, eighteen hundred and thirty-six, and second of November, eighteen hundred and thirty-seven, and made under the provisions of the act of the sixth of February, eighteen hundred and thirty-five, entitled "An act for the final adjustment of claims to lands in the State of Louisiana," be, and the same are hereby, confirmed: *Provided always,* That this is only to operate as a quit claim on the part of the United States.

SEC. 2. *And be it further enacted,* That a sum not exceeding five hundred dollars be, and the same is hereby, appropriated, out of any money in the Treasury not otherwise disposed of, to be used by the Commissioner of the General Land Office, in paying the expenses of a copy of all the documents of record, and offered before the register and receiver of the New Orleans land district, in support of the claims reported upon by them, and which are not confirmed by this act.

SEC. 3. *And be it further enacted,* That claims numbers two, five, eight, nine, eleven, twelve, thirteen, fourteen, sixteen, seventeen, nineteen, twenty-two, twenty-six, thirty-four, thirty-five, thirty-six, thirty-eight, forty and forty-six, of the report of the register and receiver of the Ouachita land district, in the State of Louisiana, dated the twenty-fourth day of July, eighteen hundred and thirty-seven, and made under the provisions of the act of the sixth day of February, eighteen hundred and thirty-five, are hereby confirmed for six hundred and forty acres each.

SEC. 4. *And be it further enacted,* That numbers one, four, seven, fifteen, eighteen, twenty, twenty-three, twenty-nine, thirty, thirty-one, thirty-seven, and forty-eight of said report, are also confirmed, as recommended by the register and receiver; number three is confirmed to two thousand acres, number twenty-four to one thousand acres, and number forty-five to two hundred acres: *Provided,* That this act shall amount only to a relinquishment on the part of the United States, and shall in no manner affect the

rights of third persons, and, on the presentation to the Commissioner of the General Land Office of a plat of survey duly approved by the surveyor general of the State of Louisiana, the claimant shall be entitled to a patent.

SEC. 5. *And be it further enacted*, That claims numbers ten, eighteen, nineteen and twenty, of the list reported by the register and receiver of the land office at Greensburg, formerly St. Helena, under the provisions of the act of Congress of the sixth day of February, eighteen hundred and thirty-five, entitled "An act for the final adjustment of claims to lands in the State of Louisiana," be, and the same are hereby confirmed; and upon the presentation to the Commissioner of the General Land Office of a plat, approved by the surveyor general of Louisiana, the owner or owners of said claims shall be entitled to a patent.

SEC. 6. *And be it further enacted*, That claims numbers seven and eight of the list mentioned in the preceding section are also confirmed, giving the right to the claimants to locate the same within one year after the passage of this act, on any public lands subject to sale at private entry, in the district where said claims are situated; which location, approved and certified by the surveyor general of Louisiana to the Commissioner of the General Land Office, will entitle said claimants to a patent: *Provided*, said claimants shall, previous to making said location, relinquish to the United States their claims to the lands originally claimed by them.

SEC. 7. *And be it further enacted*, That the claims to land within the district south of Red river, being numbers thirty-three, thirty-five, forty-five, fifty-two, seventy-seven, seventy-nine, eighty-seven, ninety-three, one hundred, one hundred and two, one hundred and three, one hundred and eight, one hundred and twenty-two, one hundred and thirty-two, one hundred and forty-two, one hundred and forty-seven, one hundred and forty-eight, one hundred and fifty-one, one hundred and fifty-two, one hundred and fifty-seven, one hundred and fifty-nine, one hundred and sixty, one hundred and sixty-two, one hundred and sixty-three, one hundred and sixty-four, one hundred and sixty-five, and one hundred and sixty-six, of the reports of the register and receiver of the land office at Opelousas, dated the thirtieth May and sixth June, eighteen hundred and forty, made under the provisions of the act of eighteen hundred and thirty-five, aforesaid, be, and the same are hereby, confirmed: *Provided*, That the Commissioner of the General Land Office shall cause a further investigation to be made, and further evidence to be taken, in relation to claim number one hundred and sixty-one of said report; and should it appear that the original claimants actually inhabited and cultivated the lands claimed on and prior to the twenty-second day of February, eighteen hundred and nineteen, then and in that case, the same shall be confirmed, by and with the approbation of the Secretary of the Treasury.

SEC. 8. *And be it further enacted*, That the following claims in the said reports of the register and receiver of the land office at Opelousas be, and the same are hereby, confirmed, as follows, to wit: Number twenty-nine, to the legal representatives of Joseph Maritaurus; number forty-six, to the extent contained in a league square; number forty-nine, for six hundred and forty acres, to the legal representatives of Bernard Lacroix; number fifty-four, to the legal representatives of J. Baptiste Vallery; number seventy-eight, for six hundred and forty acres, to Onezime Guedry, assignee of Nicholas Provost, and six hundred and forty acres to the legal heirs and representatives of Daniel Guédry and Jean Mouton, senior; number ninety-one, for so much as will, with the quantity heretofore confirmed, make the quantity of one league front by the depth of forty arpens;

number ninety-nine, for six hundred and forty acres, to embrace the residence and improvements of Hugh Mulhollan on and previous to the twentieth day of December, eighteen hundred and three; number one hundred and fourteen, to the legal representatives of Andre Dumas; number one hundred and fifty-four, to the legal representatives of Antonio Mora; number one hundred and fifty-eight, to the legal representatives of Louis Frizzini; number one hundred and sixty-seven, to Jacob Wallace or his legal representatives.

SEC. 9. *And be it further enacted*, That the provisions of the two preceding sections of this act, which confirm donation claims situate in that part of said land district known as the "neutral territory," shall not be regarded as extending to any lands which are held by any person by virtue of any bona fide French or Spanish grant, warrant, or order of survey, made prior to the twentieth of December, eighteen hundred and three, heretofore filed, according to law, with any register, or commissioners, or register and receiver of said district: *Provided*, That the confirmations made by virtue of the two preceding sections shall only operate as a relinquishment of the right of the United States, and shall not affect the right of third persons, nor preclude a judicial decision between private claimants for the same land; and on the presentation, to the Commissioner of the General Land Office of a plat of survey, duly approved by the surveyor general of Louisiana, the claimant shall be entitled to a patent.

Approved, July 6, 1842.

No. 55.—An Act to provide for satisfying claims for bounty lands, for military services in the late war with Great Britain, and for other purposes.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in all cases of warrants for bounty lands for military services in the war of eighteen hundred and twelve with Great Britain, which remain unsatisfied at the date of this act, it shall be lawful for the person in whose name such warrant shall have issued, his heirs or legal representatives, to enter at the proper land office in any of the States or Territories in which the same may lie, the quantity of the public lands subject to private entry to which said person shall be entitled in virtue of such warrant in quarter sections: *Provided*, Such warrants shall be located within five years from the date of this act.

SEC. 2. *And be it further enacted*, That the terms prescribed for the issuing of warrants by the Secretary of the Department of War, under the act entitled, "An act to allow further time to complete the issuing and locating of military land warrants during the late war," and under the act entitled "An act to extend the time of issuing military land warrants to the officers and soldiers of the Revolutionary army," both of which acts were approved January twenty-seventh, eighteen hundred and thirty-five, be, and the same are hereby, respectively, renewed and continued in force for the term of five years from and after the date of this act; and all cases which shall not, within the time aforesaid, be finally disposed of, shall be thereafter for ever barred from the benefits of all claim to bounty land for services performed within the spirit and meaning of said acts: *Provided*, That warrants issued under the provisions of this section may be located as is provided for warrants under the first section of this act: *And provided further*, That the certificate of location obtained under the provi-

* Amended, per act June 26, 1848. See Nos. 143, 230.

sions of this act, shall not be assignable, but the patent shall in all cases issue in the name of the person originally entitled to the bounty land, or to his heirs or legal representatives.

Approved, July 27, 1842.

No. 56.—An Act to provide for the armed occupation and settlement of the unsettled part of the peninsula of East Florida.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person, being the head of a family, or single man over eighteen years of age, able to bear arms, who has made or shall, within one year from and after the passage of this act, make an actual settlement within that part of Florida situate and being south of the line dividing townships numbers nine and ten south, and east of the base line, shall be entitled to one quarter section of said land, on the following conditions and stipulations:

First. That said settler shall obtain from the register of the land office, in the district in which he proposes to settle, a permit describing as particularly as may be practicable, the place where his or her settlement is intended to be made: *Provided,* That no person who shall be a resident of Florida at the time of the passage of this act, who shall be the owner of one hundred and sixty acres of land, at the time he proposes to settle, shall be entitled to a permit from the register.

Second. That said settler shall reside in the Territory of Florida, south of said township line, for five consecutive years, and to take his grant on any public land south of that township.

Third. That said settler shall erect thereon a house fit for the habitation of man, and shall clear, enclose, and cultivate at least five acres of said land, and reside thereon for the space of four years next following the first year after the date of his permit, if he or she shall so long live.

Fourth. That such settler shall, within one year after the survey of said lands, and the opening of the proper office for the entry and sale of the same by the United States, prove, before such tribunal and in such manner and form as shall be prescribed by the Commissioner of the General Land Office, with the approval of the president, the fact that the settlement has been commenced, and the particular quarter section upon which it is located; and, also, that such settler shall, within six months after the expiration of five years from the date of his permit, prove, in like manner, the fact of continued residence and cultivation, as required in the second and third conditions herein above prescribed; whereupon, and not until then, a patent shall issue to said settler, for such quarter section.

SEC. 2. *And be it further enacted,* That in the case of the settlement of the same quarter section by two or more settlers, the right to the location shall be determined by priority of settlement, to be ascertained under such rules as the Commissioner of the General Land Office, with the approval of the President, may prescribe; and the subsequent settler or settlers shall be permitted to locate the quantity he, she, or they may be entitled to elsewhere within the same township, upon vacant public lands.

SEC. 3. *And be it further enacted,* That no right or donation shall be acquired under this act within two miles of any permanent military post of the United States, established and garrisoned at the time such settlement and residence was commenced.

* Amended, see acts June 15, 1844, and June 28, 1848.

SEC. 4. *And be it further enacted*, That all sales, gifts, devises, agreements, bonds, or powers to sell, transfers, or liens, whatsoever, private or judicial, of the lands, or any portion thereof, acquired by this act, made at any time before patents shall have issued for the same, shall be utterly void and without effect, to every intent and purpose, whether in law or equity; and the purchaser or obligee, under any such sale, agreement, bond, or power to sell, transfer, or lien, shall not be entitled to recover back the price or consideration paid therefor, but shall forfeit the same absolutely to such settler or his heirs.

SEC. 5. *And be it further enacted*, That upon the death of any settler before the end of the five years, or before the issuing of the patent, all his rights under this act shall descend to his widow and heirs at law, if he leaves a widow, and to his heirs at law, if he leaves none, to be held and divided by them according to the laws of Florida, any previous sale or transfer of the same or of any interest, legal or equitable, in the same, to the contrary notwithstanding. And proof of his compliance with the conditions of this act, up to the time of his death, shall be sufficient to entitle them to the patent.

SEC. 6. *And be it further enacted*, That where any settlement, by the erection of a dwelling, or the cultivation of any portion thereof, shall be made upon the sixteenth section, before the same shall be surveyed, then and in that case other lands shall be selected by the school commissioners of the township, in lieu of said section sixteen, or such part thereof as may be claimed under this act.

SEC. 7. *And be it further enacted*, That not exceeding two hundred thousand acres of land shall be taken for settlement under this act.

SEC. 8. *And be it further enacted*, That the President of the United States may, at any time, by proclamation, suspend all further permits and settlements under this act, by giving three months' notice thereof.

SEC. 9. *And be it further enacted*, That the Commissioner of the General Land Office shall, on or before the first day of February, eighteen hundred and forty-four, report to Congress the names of every individual who shall have made the actual settlement required by the first section of this act, specifying the heads of families, and the single men, and the location of each quarter section occupied by each of said settlers.

Approved, August 4, 1842.

NO. 57.—An Act to settle the title to certain tracts of land in the State of Arkansas.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That each and every owner of a Spanish or French land claim, in the State of Arkansas, which was submitted for adjudication to the superior court of the late Territory of Arkansas, and by that court confirmed, being subsequent purchasers for a valuable consideration, is hereby authorized, within twelve months from the passage of this act, to enter, respectively, the land covered by the said claim, at the minimum price, under such regulations as the Commissioner of the General Land Office shall prescribe: *Provided*, That no such entry shall be made, except of lands mentioned and described in the original claim, or of such tracts as have been located in pursuance of the act of the twenty-sixth of May, eighteen hundred and twenty-four, entitled "An act enabling

the claimants to lands within the limits of the State of Missouri and Territory of Arkansas to institute proceedings to try the validity of their claims," or any act reviving the same; nor unless the owner of the claim shall make and subscribe an oath, before the register or receiver of the land office of the district in which the lands lie, which oath such register or receiver is hereby authorized to administer, that at the time he became the owner of the claim he had no notice or knowledge that the claim was fraudulent, or that the same rested upon any forged warrant, grant, order of survey, or other evidence of title. And, for every entry made under the provisions of this act, a patent shall issue, as though no Spanish or French claim had ever been entered upon said land.

Approved, August 11, 1842.

No. 58.—An Act to grant pre-emption rights to settlers on the "Dubuque claim" so called, in the Territory of Iowa.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the lands lying in the county of Dubuque, in the Territory of Iowa, heretofore reserved for the Dubuque claim, so called, which have not been sold by the United States, by virtue of the acts of the fourth day of July, one thousand eight hundred and thirty-six, and the third day of March, one thousand eight hundred and thirty-seven, be, and the same are hereby, declared to be public lands, and that settlers on said land, who but for said reservation would have been enabled to enter the same under the pre-emption laws of nineteenth June, one thousand eight hundred and thirty-four, twenty-second June, one thousand eight hundred and thirty-eight, first June, one thousand eight hundred and forty, or fourth September, one thousand eight hundred and forty-one, be, and they are hereby, authorized to enter the same at one dollar and twenty-five cents per acre, at any time within one year after the date of this act, upon complying with the provisions of either of said acts under which such person may claim; the settlers under the earlier law being entitled to the preference over those under a subsequent one: *Provided,* That this section is not to be regarded as extending the right of pre-emption to lands reserved for lead mines, salt springs, school sections, or town lots: *And provided further,* That should the said claim of Dubuque hereafter prove valid, compensation to the claimants shall be made by the United States, in other public lands equal in quantity, subject to private entry.

Approved, August 16, 1842.

No. 59.—An Act to provide for the satisfaction of claims arising under the fourteenth and nineteenth articles of the treaty of Dancing Rabbit creek, concluded in September, one thousand eight hundred and thirty.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act approved on the third of March, eighteen hundred and thirty-seven, entitled "An act for the appointment of commissioners to adjust the claims to reservations of

land under the fourteenth article of the treaty of eighteen hundred and thirty, with the Choctaw Indians: and also, the act approved on the twenty-second day of February, eighteen hundred and thirty-eight, entitled "An act to amend an act entitled 'An act for the appointment of commissioners to adjust the claims to reservations of land under the fourteenth article of the treaty of eighteen hundred and thirty, with the Choctaw Indians,' so far as the same are not repealed or modified by the provisions of this act," be, and the same are hereby, revived and continued in force until the powers conferred by this act shall be fully executed, subject, nevertheless, to repeal or modification by any act of Congress. And all the powers and duties of the commissioners are hereby extended to claims arising under the nineteenth article of the said treaty, and under the supplement to the said treaty, to be examined in the same manner and with the same effect as in cases arising under the fourteenth article of the said treaty: *Provided*, That the salary of said Commissioners shall not exceed the rate of two thousand five hundred dollars per annum.

SEC. 2. *And be it further enacted*, That subpoenas for the attendance of witnesses before the said commissioners, and process to compel such attendance may be issued by the said commissioners, or any two of them, under their seals in the same manner and with the same effect as if issued by courts of record, and may be executed by the marshal of any district, or by any sheriff, deputy sheriff or other peace officer designated by the said commissioners, who shall receive for such services the same fees as are allowed in the district court of the United States for the district in which the same shall be rendered for similar services, to be paid, on the certificate of the commissioners, out of the contingent fund appropriated by the fourth section of the act secondly above recited, which was approved on the twenty-second day of February, one thousand eight hundred and thirty-eight, and which is revived by this act: *Provided*, That nothing herein contained shall be construed to revive such portion of the act approved the third day of March, one thousand eight hundred and thirty-seven, referred to in the first section of this act, as provides for the employment and pay of the district attorney of either of the districts of the State of Mississippi.

SEC. 3. *And be it further enacted*, That when the said commissioners shall have ascertained that any Choctaw has complied or offered to comply with all the requisites of the fourteenth article of the said treaty, to entitle him to any reservation under that article, which requisites are as follows, to wit; that said Choctaw Indian did signify his or her intention to the agent, in person, or by some person duly authorized and especially directed, by said Indian, to signify the intention of said Indian to become a citizen of the State, within six months from the date of the ratification of the said treaty, and had his or her name, within the time of six months aforesaid, enrolled on the register of the Indian agent aforesaid, for that purpose; or shall prove, to the entire satisfaction of the said commissioners and to the Secretary of War, that he or she did signify his or her intention, within the term of six months from the date of the ratification of the treaty aforesaid, if his or her name was not enrolled in the register of the agent aforesaid, but was omitted by said agent; and secondly, that said Indian did, at the date of making said treaty, to wit, on the twenty-seventh day of September, eighteen hundred and thirty, have and own an improvement in the then Choctaw country; and that, having and owning an improvement, at the place and time aforesaid, did reside upon that identical improvement, or a part of it, for the term of five years continuously, next after the ratification of said treaty, to wit, from the twenty-fourth of February, eighteen

hundred and thirty-one, to the twenty-fourth of February, eighteen hundred and thirty-six, unless it shall be made to appear that such improvement was, before the twenty-fourth day of February, eighteen hundred and thirty-six, disposed of by the United States, and that the reservee was dispossessed by means of such disposition; and, thirdly, that it shall be made to appear, to the entire satisfaction of said commissioners, and to the Secretary of War, that said Indian did not receive any other grant of land under the provisions of any other article of said treaty; and, fourthly, that it shall be made to appear, in like manner, that said Indian did not remove to the Choctaw country west of the Mississippi river, but he or she had continued to reside within the limits of the country ceded by the Choctaw Indians to the United States, by said treaty of twenty-seventh September, in the year eighteen hundred and thirty, it shall be the duty of said commissioners, if all and each of the above requisites shall be made clearly to appear to their satisfaction, and the Secretary of War shall concur therein, to proceed to ascertain the quantity of land to which said Indian, by virtue of the fourteenth article of said treaty, is entitled to, which, when ascertained, shall be located for said Indian, according to sectional lines, so as to embrace the improvement, or a part of it, owned by said Indian at the date of said treaty; and it shall be the duty of the President of the United States to issue a patent to said Indian for said land, if he or she be living, and if not, to his or her heirs and legal representatives; and in like manner, shall the commissioners aforesaid ascertain the quantity of land granted by said article to each child of said Indian, according to the limitations contained in said article, and locate said quantity, for said children, contiguous to and adjoining the improvement of the parent of such child or children; and the President shall issue a patent for each tract of land thus located, to said Indian child, if living, and if not, to the heirs and legal representatives of such Indian child. But if the United States shall have disposed of any tract of land, to which any Indian was entitled, under the provisions of said fourteenth article of said treaty, so that it is now impossible to give said Indian the quantity to which he was entitled, including his improvements, as aforesaid, or any part of it, or to his children, on the adjoining lands, the said commissioners shall thereupon estimate the quantity to which each Indian is entitled, and allow him or her, for the same, a quantity of land equal to that allowed, to be taken out of any of the public lands in the States of Mississippi, Louisiana, Alabama, and Arkansas, subject to entry at private sale; and certificates to that effect shall be delivered, under the direction of the Secretary of War, through such agent as he may select, not more than one-half of which shall be delivered to said Indian until after his removal to the Choctaw territory west of the Mississippi river. The said commissioners shall also ascertain the Choctaws, if any, who relinquished or offered to relinquish any reservations to which he was entitled under the nineteenth article of the said treaty, or whose reservations under that article had been sold by the United States; and shall also determine the quantity to which such claimant was entitled; and the quantity of land which should be allowed him on extinguishment of such claim, at the rate of two-fifths of an acre for every acre of the land to which said claimant was entitled, said land having been estimated under this article at fifty cents per acre: *Provided nevertheless*, That no claim shall be considered or allowed by said commissioners, for or in the name or behalf of any Indian claimant whose name does not appear upon the lists or registers of claimants made by Major Armstrong, special agent for that purpose, in conjunction with the three chiefs of the three Choctaw districts, and returned to the Department of War in January, eighteen hundred and

thirty-two, and who does not appear from those registers to be entitled to a reservation under said nineteenth article.

SEC. 4. *And be it further enacted*, That the said commissioners, within two years from the time of their entering upon the duties of their offices, and as often as shall be required by the President of the United States, shall report to him their proceedings in the premises, with a full and perfect list of the names of all the Choctaws whom they shall have determined to be entitled to reservations under this act; the quantity of land to which each shall be so entitled, the number of claims which can be located according to the provisions of the fourth section of this act, and such as cannot be located according to the provisions of the fourth section of this act; and the powers and duties of the said commissioners shall cease at the expiration of two years from the time of the first organization of the board; and their proceedings may be terminated by the President at any time previous to the expiration of the said two years.

SEC. 5. *And be it further enacted*, That the commissioners to be appointed under this act shall also ascertain and determine the quantity of land to which any Choctaw or other person named in the supplement to the said treaty of Dancing Rabbit creek was entitled by virtue thereof, and which such person has by any means been prevented from receiving.

SEC. 6. *And be it further enacted*, That if the President of the United States shall approve and confirm the determination of the commissioners heretofore appointed to investigate the claims existing under the fourteenth article of the said treaty of Dancing Rabbit creek, in any case, he shall cause to be delivered to the claimant, if he be a Choctaw Indian, his legal representatives or heirs, certificates, as provided by the fourth section of this act, for the quantity of land to which such claimant shall appear, by such determination, to have been entitled, in full satisfaction and discharge of such claim: *Provided*, Such determination was made by adhering, in every instance, to the requisites contained in the fourth section of this act: *And provided also*, That said claims, nor either of them, cannot now be located, according to the provisions of the fourth section of this act.

SEC. 7. *And be it further enacted*, That distinct accounts shall be kept of the certificates issued in satisfaction of the claims provided for by this act, and of all expenses attending the execution of the same; and the amount thereof shall be retained and withheld from any distribution to the States.

SEC. 8. *And be it further enacted*, That nothing in this act contained shall be so construed as to authorize the said commissioners to adjudicate any claim which may be presented by a white man who may have had, or now has, an Indian wife or family; and any patent to land, which shall issue on any Indian claim, under the provisions of the treaty aforesaid, shall be issued to the Indian to whom the claim was allowed, if living, and if dead, to his or her heirs and legal representatives, any act of Congress, or usage, or custom, to the contrary notwithstanding.

SEC. 9. *And be it further enacted*, That no claim shall be allowed, under the fourteenth article of said treaty, if the said commissioners shall be satisfied, by such proof as they may prescribe, that said claim had been, previous to the expiration of five years from the ratification of said treaty, assigned, either in whole or in part; and in case of a partial assignment, or agreement for an assignment thereof, the same shall be allowed so far only as the original Indian claimant was, at that date, the bona fide proprietor thereof.

SEC. 10. *And be it further enacted*, That all claims under either of the articles of said treaty mentioned above, or the supplemental articles thereof,

which shall not be duly presented to said commissioners for allowance within one year after the final passage of this act shall be thereafter forever barred

Approved, August 23, 1842.

No. 60.—An Act for the relief of certain settlers in the Territory of Wisconsin.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That every settler in the district of lands subject to sale at Mineral Point, in the Territory of Wisconsin, who shall show, by proof which shall be satisfactory to the register and receiver of the land office at Muscoday, that he, by cultivation and possession, as required by the pre-emption act of the nineteenth of June, eighteen hundred and thirty-four, was entitled to a right of pre-emption; and that he, the said settler, was refused the privileges granted by said act, in consequence of the mineral character of the tract of land applied for by him, shall be permitted to enter, at the rate of one dollar and twenty-five cents an acre, one complete quarter section of land, of any lands in said land district, which have not yet been offered at public sale; *Provided*, That no tract shall be entered, by any settler claiming under this act, which contains mines or discoveries of lead ore, or on which there may be an improvement, or on which any person may have a residence, or which may have been reserved from sale; *And provided further*, That the claimant under this act, and his witnesses, shall make oath, before a person duly qualified to administer oaths, to all the facts stated by them.

SEC. 2. *And be it further enacted*, That the provisions of this act be carried into effect, in conformity with the instructions which may be given by the Secretary of the Treasury, to the register and receiver of the land office at Muscoday.

Approved, August 23, 1842.

No. 61.—An Act to authorize the selection of school lands in lieu of those granted to the half-breeds of the Sac and Fox Indians.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the county commissioners of the county of Lee, in the Territory of Iowa, be, and they are hereby authorized to select, of any of the public lands of the United States subject to private entry within the Iowa Territory, one section for each entire township of land in the "half-breed tract," in said county, and a proportional quantity for each fractional township in said tract, under such rules and regulations as shall be prescribed by the Secretary of the Treasury; which land, when selected, shall be subject to the same rules and regulations, respecting school lands, as the sixteenth sections in all the townships of the public lands are subject.

Approved, August 23, 1842.

No. 62.—An Act to confirm the sale of public lands in certain cases.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in all cases when any entry has been made, under the pre-emption laws, of land which was public land, subject to sale at the date of such entry, and when patents for the same have not been issued from the General Land Office, because of the original tract claimed, or the float arising therefrom, exceeding the quantity specified in the law, or when the adjudication has been made by the receiver and the clerk of the register, acting in the stead of the register, or when the proof upon which the claim is founded is not in the form, nor full, as to all the facts required by law, but substantially so, such entries and sales are hereby confirmed, and patents shall be issued thereon, as in other cases: *Provided*, That the Secretary of the Treasury shall be satisfied that such entries have been in other respects fair and regular, and that the evidence sustains the claim; that they are not contested by other persons claiming the same, and that no fraud shall appear in them: *And provided also*, That the act of fourth September, eighteen hundred and forty-one, entitled "An act to appropriate the proceeds of the sales of public lands, and to grant pre-emption rights," shall be so construed as not to confer on any one a right of pre-emption by reason of a settlement made on a tract heretofore sold under a prior pre-emption law, or at private entry, when such prior pre-emption or entry has not been confirmed by the General Land Office, on account of any alleged defect therein, and when such tract has passed into the hands of an innocent and bona fide purchaser.

Approved, August 26, 1842.

No. 63.—An Act for creating a new land district in the State of Missouri, and for changing the boundaries of the southwestern and western land districts in said State.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all that portion of the "western land district," created by an act of Congress, entitled "An act to establish an additional land office in the State of Missouri," approved third of March, eighteen hundred and twenty-three, which is situated north of the Missouri river, together with the late northwest addition to the State of Missouri, commonly known as the "Platte river country," shall constitute a separate land district, to be called the Platte district.

SEC. 2. *And be it further enacted,* That there shall be a register and a receiver appointed for said land district, who shall reside and superintend the sales of the public lands at such place as the President shall designate. They shall give security in the same manner and in the same sums, and their compensation, emoluments, duty, and authority, shall, in every respect, be the same in relation to the lands which may be disposed of at said office, as are or may be provided by law relative to the registers and receivers of public money in the several offices established for the sale of the public lands.

SEC. 3. *And be it further enacted,* That all that part of the southwestern district of Missouri which is situated north of the line between townships thirty-four and thirty-five, and that portion of the Fayette land district

lying west of the line dividing ranges twenty and twenty-one west, south of the Missouri river, is hereby annexed to, and shall make a part of the western or Lexington district of Missouri, the office for which district shall be located at such place as the President shall designate.

SEC. 4. *And be it further enacted*, That it shall be the duty of the Secretary of the Treasury, as soon as the same can be done, to cause the plats of the surveys of the new district hereby created, and of the portion annexed to the western district, to be deposited in the proper offices, and he is hereby authorized to allow and pay, out of the proceeds of the sales of the public lands, the reasonable expenses which may be incurred in carrying this act into effect.

SEC. 5. *And be it further enacted*, That this act shall take effect and be in force from and after the expiration of six calendar months from the date of the passage thereof.

Approved, August 29, 1842.

No. 64.—An Act in relation to lands sold in the Greensburgh, late St. Helena, land district, in the State of Louisiana, and authorizing the re-survey of certain lands in said district.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in all cases where lands shall have been entered at the land office in the Greensburgh, late St. Helena, land district, in the State of Louisiana, where the United States cannot issue patents therefor, owing to the errors and imperfections of the public surveys, or to conflicting claims, it shall be lawful for the person having made such entries, or his or her heirs or legal representatives, or grantees, or their heirs or legal representatives, who may [be] legally and equitably entitled to the same, after a demand of the patent, and a refusal to issue the same, to surrender his or her certificate of purchase to the Secretary of the Treasury to be cancelled; and, upon such surrender, it shall be the duty of the Secretary of the Treasury to refund, without interest, the purchase-money for said lands to the person entitled to receive the same, out of any money in the Treasury not otherwise appropriated.

SEC. 2. *And be it further enacted*, That it shall be lawful for the President of the United States, if he shall deem it expedient, to cause a re-survey of all or any part of the lands lying in said district remaining unsold, or the certificates for which may be surrendered in virtue of this or any other act of Congress, thereby correcting the surveys, and designating the lands covered by private claims under Spanish or French grants; and so soon as said re-surveys shall have been returned and confirmed by the Secretary of the Treasury, the unreserved public lands therein specified shall be subject to the laws for the disposal of the public lands, and patents therefor shall issue as in other cases: *Provided*, That purchasers aforesaid may retain their certificates of purchase, and the surveys of said tracts shall be corrected, and when said surveys are corrected, may receive their patents from the United States for the land so purchased by them.

Approved, August 29, 1842.

No. 65.—An Act supplementary to “An act to provide for the adjustment of titles to land in the town of Detroit, and Territory of Michigan, and for other purposes,” passed April twenty-one, eighteen hundred and six.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the mayor, recorder, and aldermen of the city of Detroit, in the State of Michigan, be, and they, or a quorum of them in council assembled, are hereby, authorized to hear, examine, and finally adjust, all claims arising under the act to which this is supplementary, against the governor and judges of the late Territory of Michigan, and receive all moneys, or other rights to property to which the said governor and judges were entitled, or became entitled under said act.

SEC. 2. *And be it further enacted,* That the said mayor, recorder, and aldermen, of the said city of Detroit be, and they are hereby, entitled to receive from any person or persons having possession of the same, the journals, records, papers, and books of the governor and judges of the late Territory of Michigan, acting as a land board, under the act of April twenty-first, one thousand eight hundred and six, to which this is a supplement; and that all powers and rights vested by the said act in the said governor and judges, for the purposes therein mentioned, are hereby transferred and vested in the mayor, recorder, and aldermen, of the city of Detroit, in the State of Michigan. And the said mayor, recorder, and aldermen, are hereby authorized to institute proceedings at law or in equity, in any court of competent jurisdiction, in all cases where it may be necessary to carry into effect the purposes of this act.

SEC. 3. *And be it further enacted,* That any land or other property, real or personal, remaining, except the court-house and jail erected under the act to which this is a supplement, after satisfying all just claims provided for in the first section of the act to which this is a supplement, is hereby vested in the said mayor, recorder, and aldermen, of the city of Detroit to be disposed of by them at their discretion, to the best advantage; and they are hereby authorized to make deeds to purchasers thereof, or other sufficient conveyances; and the proceeds of the land or other property effects or claims so disposed of, and of other rights and claims of the said governor and judges, shall, after the payment of all necessary expenses incurred in giving effect to said act and to this act and in the adoption of such measures as they may deem necessary for preserving in proper form the records and other evidences of the proceedings of said governor and judges, be applied by the said mayor, recorder and aldermen, to such object or objects of public improvement in said city, as the said mayor, recorder, and aldermen, may in council direct. And the said mayor, recorder, and aldermen, are hereby required to take an oath or affirmation for the faithful discharge of their duties under this act, and make a report to Congress, in writing, of their proceedings, on or before the first day of January, one thousand eight hundred and forty-four.

Approved, August 29, 1842.

No. 66.—An Act to authorize the States of Indiana and Illinois to select certain quantities of land, in lieu of like quantities heretofore granted to the said States, for the construction of the Wabash and Erie and the Illinois and Michigan canals.

Be it enacted by the Senate and House of Representatives of the United

States of America in Congress assembled, That there be vested in the State of Indiana twenty-four thousand two hundred and nineteen acres, and fourteen hundredths of an acre of land, to be selected under the authority of the Governor of said State, from any of the unsold public lands therein, not subject to the right of pre-emption, as an equivalent for certain lands covered by Indian reservations in the lands acquired by treaties with the Miami Indians, in the years eighteen hundred and thirty-seven and eighteen hundred and thirty-nine, respectively, and which, had said reservations not been permitted or allowed, would have belonged to said State in virtue of the act of the second of March, eighteen hundred and twenty-seven, entitled "An act to grant a certain quantity of land to the State of Indiana, for the purpose of aiding said State in opening a canal to connect the waters of the Wabash river with those of Lake Erie.

SEC. 2. *And be it further enacted*, That the Governor of the State of Illinois is hereby authorized to cause to be selected, from any of the unsold public lands in that State, not subject to the right of pre-emption, the quantity of five thousand seven hundred and sixty acres, in lieu of sections numbered three and nine, in township thirty-two, north of range three east; sections thirteen and twenty-one, in township thirty-four, north of range six east; sections twenty-five and thirty-three, in township thirty-three, north of range eleven east; and sections thirteen, nineteen, and twenty-one, in township thirty-three, north of range eight, east of the third principal meridian, heretofore selected by the said State under "An act to grant a quantity of land to the State of Illinois, for the purpose of aiding in opening a canal to connect the waters of the Illinois river with those of Lake Michigan," but which had been sold and patented to individuals by the United States, before the location by the said State had been approved.

SEC. 3. *And be it further enacted*, That the selections of lands made under this act shall be reported by the Governors of the said States respectively, to the Secretary of the Treasury, and approved by the President of the United States.

*Approved, August 29, 1842.**

No. 67.—An Act to establish an additional land office in Florida.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of the public lands of the United States, in the Territory of Florida, as lies east of the Suwannee river, and west of the line dividing ranges twenty-four and twenty-five, except that lying east of St. Mary's river, north of the basis parallel, shall form a new land district, to be called the Alachua land dis-

* The following other laws have been enacted on the same subject:—"An act to authorize the State of Illinois to open a canal through the public lands, to connect the Illinois river with lake Michigan." Approved March 30, 1822. "An act to authorize the State of Indiana to open a canal through the public lands, to connect the navigation of the rivers Wabash and the Miami of Lake Erie." Approved May 26, 1824. "An act to vest in the State of Indiana certain lands within the limits of the canal grant." Approved May 29, 1830. "An act authorizing the selection of certain Wabash and Erie canal lands in the State of Ohio." Approved June 30, 1834. "An act to confirm to the State of Indiana the land selected by her for that portion of the Wabash and Erie canal, which lies between the mouth of the Tippecanoe river and Terre Haute, and for other purposes." Approved February 27, 1841. See also act of 3d March, 1845, No. 99, *post*.

strict; and, for the sale of the public lands within the district aforesaid there shall be a land office established in the town of Newnansville, in the county of Alachua, in the Territory aforesaid.

SEC. 2. *And be it further enacted*, That there shall be a register and receiver appointed to said office, to superintend the sale of the public land in said district, who shall reside at the town of Newnansville aforesaid, give security in the same manner and sums, and whose compensation, emoluments, duties, and authorities, shall, in every respect, be the same, in relation to lands to be disposed of at said office, as are or may be by law provided in relation to the registers and receivers of public money in the several offices established for the sale of the public lands.

SEC. 3. *And be it further enacted*, That all such public lands, embraced within the district created by this act, which shall have been offered for sale to the highest bidder, at any land office in said Territory, pursuant to any proclamation of the President of the United States, and which lands remain unsold at the taking effect of this act, shall be subject to be entered and sold at private sale by the proper officers of the office hereby created, in the same manner, and subject to the same terms, and upon like conditions, as the sale of said land would have been subject to in the said several land offices hereinbefore mentioned, had they remained attached to the same.

Approved, August 30, 1842.

No. 68.—An Act to authorize the Legislatures of the States of Illinois, Arkansas, Louisiana, and Tennessee, to sell the lands heretofore appropriated for the use of schools in those States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Legislatures of Illinois, Arkansas, Louisiana, and Tennessee, be, and they are hereby, authorized to provide by law for the sale and conveyance in fee simple, of all or any part of the lands heretofore reserved and appropriated by Congress for the use of schools within said States, and to invest the money arising from the sales thereof in some productive fund, the proceeds of which shall be forever applied, under the direction of said Legislatures, to the use and support of schools within the several townships and districts of country for which they were originally reserved and set apart, and for no other use or purpose whatever: *Provided*, Said land, or any part thereof, shall in no wise be sold without the consent of the inhabitants of such township or district, to be obtained in such manner as the Legislatures of said States shall by law direct; and in the apportionment of the proceeds of said fund, each township and district shall be entitled to such part thereof, and no more, as shall have accrued from the sum or sums of money arising from the sale of the school lands belonging to such township or district.

SEC. 2. *And be it further enacted*, That the Legislatures of said States be, and they are hereby, authorized to make such laws and needful regulations as may be deemed expedient to secure and protect from injury or waste, the sections reserved by the laws of Congress, for the use of schools, to each township, and to provide by law, if not deemed expedient to sell, for leasing the same for any term not exceeding four years, in such manner as to render them productive, and most conducive to the object for which they were designed.

SEC. 3. *And be it further enacted*, That if the proceeds accruing to any township or district from said fund, shall be insufficient for the support of schools therein, it shall be lawful for said Legislatures to invest the same in the most secure and productive manner, until the whole proceeds of the fund belonging to such township or district shall be adequate to the permanent maintenance and support of schools within the same: *Provided*, That the Legislatures aforesaid shall, in no case, invest the proceeds of the sale of the lands in any township in manner aforesaid, without the consent of the inhabitants of said township or district, to be obtained as aforesaid.

SEC. 4. *And be it further enacted*, That any sales of such lands, reserved as aforesaid, as have been made in pursuance of any of the laws enacted by the Legislatures of said States, and not inconsistent with the principles of this act, are hereby ratified and confirmed so far as the assent of the United States to the same may be necessary to the confirmation thereof.

Approved, February 15, 1843.

No. 69.—An Act to perfect the titles to lands south of the Arkansas river, held under New Madrid locations, and pre-emption rights under the act of one thousand eight hundred and fourteen [fifteen].

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the locations heretofore made of warrants issued under the act of the seventeenth of February, one thousand eight hundred and fifteen, entitled “An act for the relief of the inhabitants of the late county of New Madrid, in Missouri Territory, who suffered by earthquakes,” of those locations which were made on the south side of the Arkansas river, if made in pursuance of the provisions of that act in other respects, shall be perfected into grants, in like manner as if the Indian title to the lands on the south side of said river had been completely extinguished at the time of the passage of said act.

SEC. 2. *And be it further enacted*, That in all cases in which the locations so made on the south side of the Arkansas river may have been sold, and the lands thus located under the act aforesaid have been appropriated by the United States, the owner of the warrants issued under the provisions of the act aforesaid shall have a right to enter, within twelve months after the passage of this act, without payment, the like quantity of the public lands, of any of the unappropriated and unimproved lands in the State of Arkansas, corresponding with the legal subdivisions.

SEC. 3. *And be it further enacted*, That every settler on the public lands south of the Arkansas river shall be entitled to the same benefits accruing under the provisions of the pre-emption act of one thousand eight hundred and fourteen [fifteen], as though they had resided north of said river.

SEC. 4. *And be it further enacted*, That all Cherokee pre-emptions which have been or may be located upon any of the surveyed lands of the United States, south of the base line in Arkansas, shall be confirmed, and patents shall issue thereon as in other cases.

*Approved, March 1, 1843.**

* Under act February 17, 1815, New Madrid certificates could be located upon lands before they were offered at public sale, under a proclamation of the President, or even surveyed by the public surveyor. *Barry v. Gamble*, 3 Howard, 32. The act of April 26, 1822, recognized locations of this kind, although they disregarded the sectional lines by which the surveys were afterwards made. Ib.

No. 70.—An Act to set aside certain reservations of lands, on account of live oak in the southeastern district of Louisiana.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the reservations made by the United States in eighteen hundred and thirty-two, of lands situate in township thirteen, range twelve east; township fourteen, ranges twelve and thirteen east; township fifteen, range thirteen east; township sixteen, range sixteen east; and township seventeen, range sixteen east, in the southeastern district of Louisiana, on account of the live oak supposed to grow thereon, be set aside and annulled; and that any persons entitled to pre-emption under the existing laws, within the limits of the said townships, be admitted to make their proofs and complete their titles, in the same manner as if the reservations for live oak had not been made.

Approved, March 3, 1843.

No. 71.—An Act authorizing the sale of lands, with the improvements thereon erected by the United States, for the use of their agents, teachers, farmers, mechanics, and other persons employed amongst the Indians.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of War be, and he is hereby authorized to cause to be sold all such dwelling-houses, churches, school-houses, workshops, and other buildings belonging to the United States, as have been, or hereafter shall be, erected, for the use of their agents, teachers, farmers, mechanics, and other persons employed amongst the Indians, when the lands on which the same are erected shall have become the property of the United States, and are no longer necessary for the purposes aforesaid.

SEC. 2. *And be it further enacted,* That the Secretary of War be, and he is hereby, authorized to cause to be sold, at his discretion, with each of such buildings mentioned in the preceding section of this act, a quantity of land not exceeding one section; and on the payment of the consideration agreed for, into the treasury of the United States, by the purchaser, the said Secretary shall make, execute, and deliver to the said purchaser a title in fee simple for such lands and tenements.

Approved, March 3, 1843.

No. 72.—An Act to authorize the investigation of alleged frauds under the pre-emption laws, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Commissioner of the General Land Office be, and he hereby is, authorized to appoint a competent agent, whose duty it shall be, under direction of said Commissioner, to investigate, upon oath, the cases of fraud under the pre-emption laws, alleged to exist in the Columbus land district, in the State of Mississippi, referred to in the late annual report of said Commissioner, communicated

to Congress by letter of the Secretary of the Treasury, dated December the fifteenth, one thousand eight hundred and forty-two; and that such agent shall examine all witnesses who may be brought before him by the individual or individuals alleging the fraud, as well as those witnesses who may be produced by the parties in interest, to sustain said claims; and that he be, and is hereby, invested with power to administer to such witnesses an oath to speak the truth in regard to any question which may be deemed necessary to the full examination of the cases so alleged to be fraudulent; and such testimony shall be reduced to writing, and subscribed by each witness, and the same returned to the Commissioner, with the opinion of said agent on each claim; and any witness, so examined before the said agent, who shall swear wilfully and falsely in regard to any matter or thing touching such examination, shall be subject, on conviction, to all the pains and penalties of perjury; and it shall be the duty of the Commissioner, to decide the cases thus returned, and finally to settle the matter in controversy, subject alone to an appeal to the Secretary of the Treasury: *Provided*, That the power conferred by this section upon such agent is hereby limited to the term of one year from and after the date of this act; and the compensation to be paid to said agent shall not exceed three dollars per day for each day he may be necessarily engaged in the performance of the duties required by this section.

SEC. 2. *And be it further enacted*, That in any case, where a party entitled to claim the benefits of any of the pre-emption laws shall have died before consummating his claim, by filing, in due time, all the papers essential to the establishment of the same, it shall be competent for the executor or administrator of the estate of such party, or one of the heirs, to file the necessary papers to complete the same: *Provided*, That the entry in such cases shall be made in favor of "the heirs" of the deceased pre-emptor, and a patent thereon shall cause the title to inure to said heirs, as if their names had been specially mentioned.

SEC. 3. *And be it further enacted*, That every settler on section sixteen, reserved for the use of schools, or on other reserves or land covered by private claims of others, which was not surveyed at the time of such settlement, and who shall otherwise come within the provisions of the several pre-emption laws in force at the time of the settlement, upon proof thereof before the register of the proper land office, shall be entitled to enter, at the minimum price, any other quarter section, or fractional section, or fractional quarter section, in the land district in which such school section or reserve or private claim may lie, so as not to exceed one hundred and sixty acres, not reserved from sale, or in the occupancy of any actual bona fide settler: *Provided*, such settlement was made before the date of the act of fourth September, eighteen hundred and forty-one, and after the extinguishment of the Indian title.

SEC. 4. *And be it further enacted*, That where an individual has filed, under the late pre-emption law, his declaration of intention to claim the benefits of said law for one tract of land, it shall not be lawful for the same individual at any future time, to file a second declaration for another tract.

SEC. 5. *And be it further enacted*, That claimants under the late pre-emption law, for land not yet proclaimed for sale, are required to make known their claims, in writing, to the register of the proper land office, within three months from the date of this act when the settlement has been already made, and within three months from the time of the settlement when such settlement shall hereafter be made, giving the designation of the tract, and the time of settlement; otherwise his claim to be forfeited, and the tract awarded to the next settler, in the order of time, on the same

tract of land, who shall have given such notice, and otherwise complied with the conditions of the law.

SEC. 6. *And be it further enacted*, That whenever the vacancy of the office either of register or receiver, or of both, shall render it impossible for the claimant to comply with any requisition of any of the pre-emption laws within the appointed time, such vacancy shall not operate to the detriment of the party claiming, in respect to any matter essential to the establishment of his claim : *Provided*, That such requisition is complied with within the same period after the disability is removed as would have been allowed him had such disability not existed.

SEC. 7. *And be it further enacted*, That where a settler on the public lands may reside on a quarter section, a fractional quarter section, or a fraction of a section less than one hundred and sixty acres, and cultivated land on any other and different tract of either of the descriptions aforesaid, he or she shall be entitled, under the act of June twenty-two, one thousand eight hundred and thirty-eight, to the same privileges of a choice between two legal subdivisions of each, so as to include his or her house and farm, not to exceed one hundred and sixty acres in all, as is granted, by the first section of that act, to settlers residing on a quarter section, and cultivating on another and different quarter.

SEC. 8. *And be it further enacted*, That where two or more persons are residing on any of the species of tracts specified in section seven of this act, as required by the acts of the twenty-second of June, one thousand eight hundred and thirty-eight, and first of June, one thousand eight hundred and forty, and any one or more of said settlers may have cultivated land during the period of residence required by either of said acts, on another and different tract, or other and different tracts, the latter mentioned settlers shall be entitled to the option of entering the tract lived on, jointly with the other or others, or of abandoning the tract lived on to those who have not cultivated land as above required, and entering the tract or tracts cultivated, so as not to exceed one hundred and sixty acres to any one settler, who, by virtue of this section, is entitled to a separate entry ; or such joint settlers may jointly enter the tract so jointly occupied by them, and in addition enter other contiguous unoccupied lands, by legal subdivisions, so as not to exceed one hundred and sixty acres in all to each of such joint settlers : *Provided*, That the extended privileges granted to pre-emptors by this act, shall not be construed to deprive any other actual settler of his or her previous and paramount right of pre-emption, or to extend to lands reserved for any purpose whatever.

SEC. 9. *And be it further enacted*, That all persons coming within the tenth section of the act of the fourth of September, eighteen hundred and forty-one, entitled "An act to appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights," shall be entitled to the right of pre-emption under its provisions, notwithstanding such persons claiming the pre-emption shall have settled upon and improved the lands claimed before the same were surveyed : *Provided*, Such settlements were made before the date of the aforesaid act, and after the extinguishment of the Indian title. And said act shall not be so construed as to preclude any person who may have filed a notice of intention to claim any tract of land by pre-emption under said act, from the right allowed by law to others to purchase the same by private entry after the expiration of the right of pre-emption.

Approved, March 3, 1843.

No. 73.—An Act directing the survey of the northern line of the reservation for the half-breeds of the Sochs [Sacs] and Fox tribes of Indians by the treaty of August one thousand eight hundred and twenty-four.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Chief Engineer cause to be surveyed and suitably demarked the northern boundary line of the reservation for the use of the half-breeds of the Soch [Sacs] and Fox tribes of Indians, by the treaty of the fourth of August, one thousand eight hundred and twenty-four, beginning at the point, which at the date of said treaty was known and recognized as the northwest corner of the State of Missouri, and running thence due east to the river Mississippi, the section of said line lying between that stream and the river Des Moines being the northern boundary line of said reservation.

*Approved, March 3, 1843.**

No. 74.—An Act providing for the sale of certain lands in the States of Ohio and Michigan, ceded by the Wyandot tribe of Indians, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all that tract of land in the State of Ohio, to which the Indian title was extinguished by a treaty with the Wyandot tribe of Indians, concluded at Upper Sandusky, March seventeen, eighteen hundred and forty-two, shall be attached to, and made a part of, the consolidated land district in which it is situated; and that the land office for the said district shall be removed from Lima to the town of Upper Sandusky, within the tract aforesaid, as soon as, in the judgment of the President of the United States, such removal shall be proper.

SEC. 2. *And be it further enacted,* That a portion of the tract aforesaid, including the town of Upper Sandusky, shall, under the direction of the surveyor general, be laid off into town lots, streets, and avenues; and into out lots, in such manner and of such dimensions as he may judge proper: *Provided,* That the land so laid off shall not exceed in quantity six hundred and forty acres, nor the town lots a quarter of an acre each, nor the out lots exceed the quantity of two acres each; and the residue of the lands in the tract shall be surveyed as other public lands, in connection with the adjacent previous surveys.

SEC. 3. *And be it further enacted,* That all the public land in said tract, with the exception of the section numbered sixteen, in each township, which shall remain for the support of common schools, and of the lots reserved by the provisions of the aforesaid treaty, which shall remain for the purposes therein expressed, shall, so soon as the surveys and plats of the same be returned to the general and district land offices, be offered at public sale, at Upper Sandusky, under the superintendence of the register of the land office and the receiver of public moneys for the district, at such time as shall be designated by proclamation of the President of the United States; the sales to remain open for two weeks, and no longer, and the lands not to be sold at public sale nor be subject to private entry therefor for a price less than two dollars and fifty cents per acre.

SEC. 4. *And be it further enacted,* That the town lots and out lots directed by this act to be laid off shall, with the exception of four town

* Repealed, see No. 82.

lots, to be selected by the superintendents of the sale, for the use of and to be vested in the town when it shall become corporate, and also of the lots reserved by the seventeenth article of the aforesaid treaty, to remain for the uses therein provided for, be offered at public sale at the time the other lands in the tract are offered, and are to be subject to entry at private sale thereafter: *Provided however*, That no town lot shall be sold for less than twenty dollars, nor any out lot for less than at the rate of fifteen dollars per acre.

*SEC. 5. *And be it further enacted*, That, in executing, the surveys of the lands in the tract aforesaid, the surveyor general shall cause the improved lands to be designated on the general plat, and the position, extent, and quality of each improvement to be carefully noted; and the Commissioner of the General Land Office shall cause the superintendents of the sales to be furnished with a copy of the schedule of the appraised value of improvements ascertained, pursuant to the fifth article of the said treaty; and in any case, where the lines for subdivision of sections shall divide and injuriously affect the value of an improvement, the superintendents of the sale shall be authorized, under instruction of the Commissioner of the General Land Office, to offer, at public and private sale, an entire quarter section, or half-quarter section, and to attach together halves of two adjacent quarter sections, so as to preserve, as far as practicable, the improvements on a tract entire; and if, in offering at public sale any tract on which improvements exist, the real value of the same, according to the estimate of the superintendents, shall not be bidden, it shall be their duty to withdraw the tract from sale, and the tracts thus withdrawn from sale shall again be offered at public sale, due public notice first being given, when directed by the Commissioner of the General Land Office.

SEC. 6. *And be it further enacted*, That all the lands in the Wyandot reserve, on both sides of the river Huron in the State of Michigan, ceded to the United States by the aforesaid treaty, shall be attached to and made a part of the district of lands subject to sale at Detroit; and shall be offered for sale at the land office, in the same manner, both as to public and private sale, as is directed for the sale of the lands of the reserve in the State of Ohio by this act: *Provided*, That the land shall not be sold for less than two dollars per acre.

Approved, March 3, 1843.

NO. 75.—An Act in relation to the exemplifications of the records of land patents and other evidences of title, and amendatory of the entitled “An act to reorganize the General Land Office.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That literal exemplifications of any such records which have been or may be granted in virtue of the provisions of the seventh section of the act, approved on the fourth day of July, eighteen hundred and thirty-six, entitled “An act to reorganize the General Land Office,” shall be deemed and held to be of the same validity in all proceedings whether at law, or in equity, wherein such exemplifications are adduced in evidence, as if the names of the officers signing and countersigning the same, had been fully inserted in such record.

* Part of 5th section repealed. See No. 200.

SEC. 2. *And be it further enacted*, That exemplifications granted in pursuance of the aforesaid section of the act aforesaid, of any warrant survey, assignment, and other evidences comprising the entire muniments of title, whereon any patent has been based for lands granted by the United States in the aforesaid Virginia military land district or elsewhere, shall be, and are hereby, declared and held as of equal validity with the original patent, warrant survey, assignment, or other evidence of title, on file in said office.

Approved, March 3, 1843.

No. 76.—An Act for the relief of the Stockbridge tribe of Indians, in the Territory of Wisconsin.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the township of land containing twenty-three thousand and forty acres, (or whatever quantity now remains to them,) lying on the east side of Winnebago lake, in the Territory of Wisconsin, which, by the proviso of a treaty made with the Menomonie Indians on the seventeenth day of February, in the year eighteen hundred and thirty-one, and ratified on the ninth day of July, eighteen hundred and thirty-two, was reserved for the use of the Stockbridge tribe of Indians, and which, by a subsequent treaty with the Menomonie tribe, bearing date twenty-seventh October, eighteen hundred and thirty-two, and ratified thirteenth March, eighteen hundred and thirty-three, was further secured to the said Stockbridge tribe of Indians, may be partitioned and divided among the different individuals composing said tribe of Stockbridge Indians, and may be held by them, separately and severally, in fee simple, after such division shall have been made in the manner hereinafter mentioned.

SEC. 2. *And be it further enacted*, That, for the purpose of making partition and division of said lands among the individuals of said tribe of Stockbridge Indians, a board of commissioners shall be constituted, to consist of five of the principal or head men of said tribe, a majority of whom shall constitute a quorum to do business, whose duty it shall be to make a just and fair partition and division of said lands among the members of said tribe, or among such of them as, by the laws and customs and regulations of said tribe, are entitled to the same, and in such proportions and in such manner as shall be consistent with equity and justice, and in accordance with the existing laws, customs, usages, or agreements of said tribe.

SEC. 3. *And be it further enacted*, That, for the purpose of electing or choosing said board of commissioners, a meeting of said tribe shall be held at their church or principal public place, on the reservation of land aforesaid, on the first Monday in April, eighteen hundred and forty-three, at which all the male members of said tribe over the age of twenty-one years shall be allowed to vote for such commissioners; and the said five commissioners shall then and there be elected or chosen by the said tribe, by a majority of the whole number of such voters then present. And the judge of the district in which said lands are situated, (or, in his absence, the register of the land office at Green Bay, or the commanding officer of the United States troops at Fort Howard) shall attend at the time and place

* Repealed 6th of August, 1846. See No. 112.

aforesaid, and preside at said meeting, superintend the said election, and see that the proceedings are fairly conducted. And the said presiding officer may, in his discretion, prescribe whether the said election shall be by ballot or viva voce, and shall, in other respects, cause the proceedings to be conducted in such a manner as to ensure a fair and proper choice or election; and after the said commissioners shall have been so chosen or elected, the said presiding officer shall immediately certify that fact, setting forth the names of the commissioners who shall be elected, and shall make two copies of said certificate, one of which he shall file in the office of the register of the land district at Green Bay, and the other he shall transmit by mail to the President of the United States.

SEC. 4. *And be it further enacted*, That after the said commissioner shall have been elected or chosen as above prescribed, and as soon thereafter as conveniently may be, they shall proceed to make partition and division of all the lands aforesaid, among the individual members of said tribe, or among such of them as, by the laws, customs, usages, or agreements of said tribe, are justly entitled to the same, and in such way and manner, and upon such principles, and in such proportions, as shall be agreeable to equity and justice, and consistent with the laws, usages, customs, and agreements of said tribe: *Provided however*, That the buildings and improvements, and the farms on which the same are situated, which are now held or possessed in severalty by the members of said tribe, shall, so far as the same can consistently be done, be allotted or apportioned to the present occupants; and that no person or individual of said tribe shall be dispossessed or deprived of the improvements or land which they now occupy, unless it shall be found by the said commissioners that such person or persons are in possession of and occupying more land than they are justly entitled to, and then the overplus may be apportioned to others.

SEC. 5. *And be it further enacted*, That after the said commissioners shall have made such partition and division as aforesaid, they shall make, or cause to be made, a full report of their proceedings in the premises, setting forth the name of each person to whom they have apportioned any part of said land, the quantity apportioned or allotted to each, with the metes and bounds, or other definite description of each several piece or parcel of land; and they shall accompany the said report with a fair and accurate map of the whole, showing the divisions and partitions aforesaid; which report and map, or a true copy thereof, shall be deposited with the town clerk of said tribe, on or before the first day of July, eighteen hundred and forty-three, and shall remain open for inspection to all for the space of twenty days thereafter; and if any member or members of said tribe shall object to the partition or division so made by the said commissioners, or shall deem himself or themselves aggrieved thereby, he or they may, within ten days thereafter, give notice thereof to the said commissioners, who shall within twenty days thereafter meet to hear and determine such grievances, and take testimony, if necessary, and, after such hearing, shall have power to alter or modify such partition, if, in their judgment, any alteration or modification is necessary, in order to do equal and exact justice to all parties interested.

SEC. 6. *And be it further enacted*, That, after the said report shall be finally completed, the commissioners shall cause three fair copies of the said report, and of the map accompanying the same, as finally agreed upon and settled, to be made and signed by said commissioners, one copy of which shall be deposited in the office of the Secretary of said Territory, one copy in the office of the clerk of the county within which said lands are situated, and the other shall be transmitted to the President of the United

States, who shall thereupon cause patents to be issued to the several individuals named in said report, for the lands so apportioned to them respectively, by which the said persons shall be authorized to hold the said lands in fee simple, to themselves and their heirs and assigns.

SEC. 7. *And be it further enacted*, That the said report and map shall be filed with the Secretary of said Territory, and in the clerk's office of said county, and shall also be transmitted to the President, on or before the first day of January, eighteen hundred and forty-four; and, after the same shall have been filed and transmitted to the President as aforesaid, the said Stockbridge tribe of Indians, and each and every of them, shall then be deemed to be, and from that time forth are hereby declared to be, citizens of the United States, to all intents and purposes, and shall be entitled to all the rights, privileges, and immunities of such citizens, and shall, in all respects, be subject to the laws of the United States and of the Territory of Wisconsin, in the same manner as other citizens of said Territory; and the jurisdiction of the United States and of said Territory shall be extended over the said township or reservation now held by them, in the same manner as over other parts of said Territory; and their rights as a tribe or nation, and their power of making or executing their own laws, usages, or customs, as such tribe, shall cease and determine: *Provided however*, That nothing in this act contained shall be so construed as to deprive them of the right to any annuity now due them from the State of New York or the United States, but they shall be entitled to receive any such annuity, in the same manner as though this act had not been passed.

Approved, March 3, 1843.

No. 77.—Joint Resolution directing certain papers relating to titles to land in Louisiana, to be returned to the General Land Office.

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Senate and the Clerk of the House of Representatives be, and they are hereby, instructed to furnish to the Commissioner of the General Land Office, the original reports from the several Land Offices in the State of Louisiana, made under the provisions of an act entitled "An act for the final adjustment of claims to land in the State of Louisiana," approved, February sixth, one thousand eight hundred and thirty-five; also, the title papers and evidence relating to claims in said reports, confirmed by an act entitled "An act confirming certain land claims in Louisiana, approved July sixth, one thousand eight hundred and forty-two: *Provided*, That claimants shall be entitled to withdraw their original title-papers after fair copies shall have been taken by the Commissioner of the General Land Office.

Approved, March 3, 1843.

No. 78.—Joint Resolution relating to patents for bounty lands.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That in all cases where an officer

or soldier of the revolutionary war, or a soldier of the last war, was entitled to bounty land, has died before obtaining a patent for the land, and where application is made by a part only of the heirs of such deceased officer or soldier for such bounty land, it shall be the duty of the proper officers of the War Department to issue the warrant or patent in the name of the heirs of such deceased officer or soldier, without specifying each; and the patent so issued in the name of the heirs, generally, shall inure to the benefit of the whole, in such portions as they are severally entitled to by the laws of descent in the State or Territory where the officer or soldier belonged at the time of his death.

Approved, March 3, 1843.

No. 79.—An Act for the relief of the citizens of towns upon the lands of the United States, under certain circumstances.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever any portion of the surveyed public lands has been or shall be settled upon and occupied as a town site, and therefore not subject to entry under the existing pre-emption laws, it shall be lawful, in case such town or place shall be incorporated, for the corporate authorities thereof, and, if not incorporated, for the judges of the county court for the county in which such town may be situated, to enter, at the proper land office, and at the minimum price, the land so settled and occupied, in trust, for the several use and benefit of the occupants thereof, according to their respective interests; the execution of which trust, as to the disposal of the lots in such town, and the proceeds of the sales thereof, to be conducted under such rules and regulations as may be prescribed by the legislative authority of the State or Territory in which the same is situated: *Provided,* That the entry of the land intended by this act be made prior to the commencement of the public sale of the body of land in which it is included, and that the entry shall include only such land as is actually occupied by the town, and be made in conformity to the legal subdivisions of the public lands authorized by the act of twenty-fourth April, one thousand eight hundred and twenty, and shall not in the whole exceed three hundred and twenty acres: *And provided also,* That any act of said trustees, not made in conformity to the rules and regulations herein alluded to, shall be void and of none effect: *And provided also,* That the corporate authorities of the town of Weston in the county of Platte, State of Missouri, or the county court of Platte county, in said State, shall be allowed twelve months, from and after the passage of this act, to enter at the proper land office, the lands upon which said town is situate.

Approved, May 23, 1844.

No. 80.—An Act to amend an act entitled "An act to reorganize the General Land Office."*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the passing

* See No. 32.

of this act, the office of Solicitor of the General Land Office shall be, and the same is hereby, abolished; and that all the duties heretofore by law required to be performed by the said Solicitor shall hereafter be performed by the Recorder, or by such other person or persons in the employ of the United States in said General Land Office, as the Commissioner of said General Land Office may from time to time direct.

SEC. 2. *And be it further enacted*, That the fifth section of the act entitled "An act to reorganize the General Land Office," and all other acts and parts of acts contrary to the provisions of this act, be, and the same are hereby, repealed.

Approved, June 12, 1844.

No. 81.—An Act granting a section of land for the improvement of Grant river at the town of Potosi, in Wisconsin Territory.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be, and hereby is, granted to the Territory of Wisconsin, section number thirty-four, in township number three north, in range number three west, of the fourth principal meridian in the said Territory, for the purpose of improving Grant river, known as the Grant Slue, at the town of Potosi, in the said Territory, and for no other use or purpose whatever: and the said land shall be surveyed, and divided into lots, and shall be sold and disposed of in such manner, and under such regulations and restrictions, as the Legislature of the said Territory shall establish; *Provided*, That in disposing of the same pre-emption rights shall be granted to actual settlers and occupants residing on said lots, at the time of the passage of this act, according to the provisions and restrictions in the next section provided.

SEC. 2. *And be it further enacted*, That the Surveyor General of Wisconsin and Iowa, shall appoint three disinterested commissioners, whose duty it shall be to view and examine all the lots which are actually occupied and improved, and assess the true value of said lots, without taking into the estimation, any of the improvements on the same; and the occupants of said lots, by paying, within one year from the passage of this act, the assessed value as aforesaid of their respective lots, shall be entitled to the right of pre-emption as aforesaid; and upon the failure of any, or all said occupants to do so, the said lot or lots to the extent of such failure, shall be sold as other lots in said town; *Provided*, That the said occupants may at any time before said lots are sold, pay the assessed value and thereby save their right of pre-emption aforesaid; *And provided further*, That the said commissioners aforesaid shall, before they enter upon their duties as such, be sworn faithfully to discharge their duties according to the provisions of this act; and they shall receive a compensation for their services to be prescribed by the Legislature of said Territory,—*Provided*, That the whole compensation to said Commissioners shall not exceed the sum of one hundred and twenty dollars.

Approved, June 15, 1844.

No. 82.—An Act to repeal an act entitled “An act directing the survey of the northern line of the reservation for the half-breeds of the Sac and Fox tribes of Indians, by the treaty of August, one thousand eight hundred and twenty-four,” approved March third, one thousand eight hundred and forty-three.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act entitled “An act directing the survey of the northern line of the reservation for the half-breeds of the Sac and Fox tribes of Indians, by the treaty of August, one thousand eight hundred and twenty-four,” approved March third, one thousand eight hundred and forty-three, be, and the same is hereby repealed.

SEC. 2. *And be it further enacted,* That the northern line of said reservation, as run and marked by Jenifer S. Sprigg, in the years one thousand eight hundred and thirty-two, and one thousand eight hundred and thirty-three, under contract with William Clark, superintendent of Indian affairs, be, and the same is hereby, ratified, approved, and established, as the correct northern boundary of said reservation.

Approved, June 15, 1844.

No. 83.—An Act to authorize the selection of certain school lands in the Territories of Florida, Iowa, and Wisconsin.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That wherever the sixteenth sections in said Territories, either in whole or in part, are now, or may hereafter be, included in private claims held by titles confirmed or legally decided to be valid and sufficient, other lands equivalent thereto, within any land district in said Territories most adjacent to said lands so taken up by private claims, “which have been offered at public sale, and remain unsold,” may be selected in lieu thereof, under the direction of the Secretary of the Treasury: and the lands so selected shall be entered in the office of the register of the land district in which they may lie, and be by such register reported to the Commissioner of the General Land Office as school lands selected under this act: *Provided,* That, before making any entry of such other lands, the case shall be made out to the satisfaction of the register and receiver of said district, agreeably to rules to be prescribed by the Commissioner of the General Land Office, for the purpose of showing that the sixteenth section, or part thereof, has been included in the manner above mentioned.

Approved, June 15, 1844.

No. 84.—An Act granting to the county of Dubuque, certain lots of ground in the town of Dubuque.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following described

* See No. 73.

pieces or parcels of land are hereby granted and given to the county of Dubuque, in the Territory of Iowa, to wit: Two lots and a half lying and being situate in the town of Dubuque, on the northwest corner of seventh and Locust streets, in said county, being the same land upon which the old county jail now stands, and is designated on the Government plat of said town as "public square."

SEC. 2. *And be it further enacted*, That the county commissioners of the county of Dubuque be, and they are hereby authorized and empowered to make sale, or otherwise dispose of the lots of land described in the first section of this act, in such manner as will best subserve the interests of said county.

Approved, June 15, 1844.

No. 85.—An Act to confirm to the city of Fernandina in Florida, certain lots reserved for public use by the Spanish Government.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That lots, numbers five and seven of block number two, in the plan of the city of Fernandina, be and are hereby confirmed and relinquished to the corporate authorities of the said city for such uses as were designed by the Spanish Government in the original plan of the said city: *Provided*, That before the issue of patents for the same, it shall be shown to the satisfaction of the President of the United States, that the said lots were intended to be reserved in the plan of said city, for a public use.

Approved, June 15, 1844.

No. 86.—An Act to authorize the issuing of patents for certain lands in the St. Augustine land district in Florida, the sales of which were not regularly reported.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in all cases where it shall appear, to the satisfaction of the Commissioner of the General Land Office, that individuals had applied to John C. Cleland, late receiver at St. Augustine, in Florida, while acting as receiver, for the entry of any of the lands in that district, and had made payment to him therefor, as required by law, and where said Cleland failed to furnish the usual evidence of such payments to the register of the land office aforesaid, and to make the usual returns thereof to the General Land Office, such individuals shall be entitled to receive patents for such entries, where the lands applied for by them have not since been sold: but if sold, the money paid by them may be applied to the purchase of any other land in that district subject to entry at private sale: *Provided*, That this act shall only apply to those cases where evidence that such application was made, is now in the General Land Office.

Approved, June 15, 1844.

NO. 87.—An Act to amend an act entitled “An act to provide for the armed occupation and settlement of the unsettled part of the peninsula of Florida.”

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in any case in which it shall appear to the Commissioner of the General Land Office that the location made by a settler under the act approved August fourth, eighteen hundred and forty-two, entitled, “An act to provide for the armed occupation and settlement of the unsettled part of the peninsula of Florida” was located upon lands which were discovered after the issue of the permit to be liable to overflow, it shall be lawful for the said Commissioner to authorize the change of the location to any other vacant quarter section within the same land district: *Provided,* application for permission to change the location shall have been made at the proper land office before the fourth day of August, eighteen hundred and forty-three.*

SEC. 2. *And be it further enacted,* That in all cases in which settlements have been made under the provisions of said act, upon lands not surveyed before the issue of permit, the settler may, after survey, locate his quarter section in any legal subdivisions of continuous or contiguous sections, or fractional sections, so as to make up the quantity of one hundred and sixty acres, as may be, and to include his improvements, and as much of the lands described in his permit as is consistent with the system of the public surveys.

SEC. 3. *And be it further enacted,* That the settlers under said act may erect their dwellings, and reside upon other than the quarter section described in their permit, *Provided,* The land upon which they so erect their habitation shall be entered and paid for by them, if in market, or if not in market, shall be so entered within three months after it shall have been offered at public sale. *And provided also,* That the condition of cultivation on the land described in the permit shall be faithfully complied with according to the terms of the act to which this is an amendment.

SEC. 4. *And be it further enacted,* That in any case in which the title of the United States to the land or any part of it, not less than forty acres, described in the permit issued by the land office to any settler, or contained in the quarter section upon which he shall have been located, shall prove to be defective, a tract of land equal in quantity to that of which the title shall have proved defective as aforesaid, may be located elsewhere upon vacant surveyed lands within the same township, or within the nearest township in which there shall be sufficient quantity of vacant arable land.

SEC. 5. *And be it further enacted,* That it shall be competent for any settler under the said act to perfect his title to the quarter section located and described in the permit, by paying to the receiver of the land office in the appropriate district the sum of one dollar and twenty-five cents per acre for the said quarter section. *Provided,* that such settler shall prove to the satisfaction of the register and receiver for the proper land district that up to the date of his application to make payment he has fully complied with the requirements of the act to which this is an amendment.

Approved, June 15, 1844.

* See Nos. 56 and 145.

No. 88.—An Act to confirm certain entries of land in the St. Augustine land district, in the Territory of Florida, made under the pre-emption law of 22d June, 1838.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States be, and he is hereby authorized to issue patents on all entries made in the St. Augustine land office in the Territory of Florida, under the act entitled “An act to grant pre-emption rights to settlers on the public lands,” approved twenty-second June, eighteen hundred and thirty-eight, where the land so entered was public land and liable to the operations of said act, any informality in the proof, or other existing defect therein, or in the mode of entry, to the contrary notwithstanding. *Provided,* That this act shall apply only to the cases where the settlers were forced from their homes by reason of Indian hostilities, and consequently were unable to make out the continuous residence required by the law.

Approved, June 15, 1844.

No. 89.—An Act to provide for the adjustment of land claims within the States of Missouri, Arkansas and Louisiana, and in those parts of the States of Mississippi and Alabama south of the thirty-first degree of north latitude and between the Mississippi and Perdido rivers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of the expired act of the twenty-sixth of May, one thousand eight hundred and twenty-four, entitled “An act to enable claimants to land within the State of Missouri and Territory of Arkansas, to institute proceedings to try the validity of their claims,” as related to the State of Missouri (excluding all such portions of said act as referred to the territory of Arkansas) be, and is hereby, revived and re-enacted, and continued in force for the term of five years, and no longer; and the provisions of that part of the aforesaid act hereby revived and re-enacted shall be, and hereby are, extended to the States of Louisiana and Arkansas, and to so much of the States of Mississippi and Alabama as is included in the district of country south of the thirty-first degree of north latitude, and between the Mississippi and Perdido rivers, in the same way and with the same rights, powers, and jurisdictions, to every extent they can be rendered applicable, as if these States had been enumerated in the original act hereby revived, and the enactments expressly applied to them as to the State of Missouri; and the district court, and the judges thereof, in each of these States, shall have and exercise the like jurisdiction over the land claims, in their respective States and districts, originating with either the Spanish, French, or British authorities, as by said act was given to the court, and the judge thereof, in the State of Missouri.

Approved, June 17, 1844.

NO. 90.—An Act respecting the northern boundary of the State of Missouri.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there shall be appointed by the Governor of Iowa Territory, by and with the advice and consent of the Council of said Territory, a commissioner, to act in conjunction with such commissioner as may be appointed by the State of Missouri, and such third person, not a citizen of the State of Missouri or Territory of Iowa, as may be designated by the two commissioners aforesaid; the duty of which said three persons it shall be, to ascertain, survey, and mark out, the northern boundary line of the State of Missouri, and to cause plats of the said line, when so ascertained, surveyed, and marked out, to be returned to the offices of the Secretary of State of the United States, of the State of Missouri, and of the Territory of Iowa, which plats shall be accompanied by reports of their proceedings in the premises.

SEC. 2. *And be it further enacted,* That said three commissioners, or a majority of them, shall have authority to appoint a surveyor, and engage the necessary assistants and laborers, to enable them to ascertain, survey, and mark the said line; and the compensation of said commissioners, and of the surveyor employed by them, shall be at the rate of eight dollars per day, for so many days as they may necessarily be employed about the business aforesaid; and the laborers and assistants shall be paid such compensation as may be agreed upon between each of them and the commissioners, or a majority of them, not to exceed two dollars per day.

SEC. 3. *And be it further enacted,* That the report, as aforesaid, of any two of said commissioners, shall be final and conclusive, and the line so ascertained, surveyed, marked out and returned as aforesaid, by any two of said commissioners shall be the northern boundary line of the State of Missouri.

SEC. 4. *And be it further enacted,* That this act shall not go into force until the Legislature of the State of Missouri shall have assented to the same, and agreed to abide by the award of said commissioners, or any two of them, as final and conclusive; and the sum of four thousand dollars is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, to carry into effect the provisions of this act.

Approved, June 17, 1844.

NO. 91.—An Act explanatory of the Treaty made with the Chippewa Indians at Saganaw, the twenty-third of January, eighteen hundred and thirty-eight.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first and second articles in the treaty made with the Chippewa Indians on the twenty-third of January, one thousand eight hundred and thirty-eight shall be so construed as to prevent the sales of land ceded by said treaty for a less sum than two dollars and fifty cents per acre from and after the first day of September one thousand eight hundred and forty-three; and that the minimum price of said lands, from and after that day shall be two dollars and fifty cents per acre.

Approved, June 17, 1844.

No. 92.—An Act to authorize the entry of certain lands, occupied by the branch pilots of the port of New Orleans, and others, in the State of Louisiana.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Andrew Anderson, James T. Allen, George Benson, John Bailey, John R. Brown, Edward Bourguin, Jacob Baker, William Brownson, Robert Cooper, Edward Clarke, Thomas Cross, William C. Davis, Edward G. Davis, Ephraim Eldridge, William Ellis, Dennis Finn, Nathaniel J. France, John Fowler, Robert Holliday, John Holland, David Johnston, Henry Johnson, James J. Jarvis, George Linton, Cyrus Lamontt, Cyrus Morgan, James W. Morgan, John Miller, Hans Myers, Erasmus Newman, John Parker, John Perrin, Asa Payson, Peter Robinson, James B. Read, Francisco Keeper, David Shepherd, Joseph Shepherd, William T. Smith, Christopher Scheltz, William Stevens, James Scott, John Swiler, James Tyson, William D. Tolbortt, William Taylor, Thomas J. Vanderslice, James B. Williams, Hiram B. Webster, James Kelly, William Denford, Edward Hansbury, Joseph E. Dunham, Charles Linguist, Gilbert Leonard, and Joseph Lampade, all of the parish of Plaquemines in the State of Louisiana, or their legal representatives, be, and they are hereby, authorized to enter at the land office in the southeastern land district in said State, within six months after the passage of this act, section seventeen, and lots one and two of section eighteen, in township twenty-three, of range thirty-three east, situated in said district, upon payment to the receiver of the said land office of one dollar and twenty-five cents per acre: *Provided*, That at the time of making said entry, they shall file in the land office a survey and plat of the land entered, signed by them or their legal representatives, specifying thereon the extent of their several claims by occupancy; and that when the said entry shall be made, the same shall enure to the benefit of such persons, severally, in the proportions and according to the quantities specified on said plat: *And provided further*, That this act shall not invalidate any rights which any other person, not herein named, may be entitled to under any law heretofore passed.

Approved, June 17, 1844.

No. 93.—A Resolution respecting receipts issued by the Treasurer of the United States, in payment for public lands.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That any certificates which have been issued by the Treasurer of the United States, in favor of individuals who have deposited moneys at the Treasury in payment for lands intended by them to be purchased under the act of Congress approved April the twenty-fourth, in the year of our Lord one thousand eight hundred and twenty, entitled “An act making further provision for the sale of the public lands,” and which certificates have been assigned, may be received in payment for public lands purchased at public sale or by private entry; and any receiver of public moneys who may have received such certificates in payment, as aforesaid, may be credited with the amount thereof, upon delivering them duly transferred to the Treasury.

Approved, June 12, 1844.

No. 94.—A Resolution relating to the public lands appertaining to the armories at Springfield and Harper's Ferry.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of War be, and he is hereby authorized to alter, establish and settle the boundary lines between the United States' lands at the Springfield armory and the contiguous lands belonging to the town of Springfield in the State of Massachusetts and to individual citizens, in such a way as may be best calculated to allow the laying out and altering of streets and highways for the mutual convenience and advantage of all parties; and for this purpose he is further authorized to exchange and convey, and to receive from the corporate authorities of Springfield, or to and from individual proprietors, such fractional parts of land as may be necessary for the accommodation and convenience of the town of Springfield in running its public streets and highways, and of the armory in securing the safety of, and free access to its workshops, arsenals, and other public buildings; and to grant on the part of the United States, and receive from the corporate authorities of Springfield or from individual proprietors, deeds and titles for the lands so exchanged and disposed of to establish convenient boundaries.

SEC. 2. *And be it further resolved,* That the Secretary of War be and he is hereby authorized and empowered to ratify and confirm an exchange of land at Harper's Ferry in the State of Virginia, which has been made between the United States and the Wager family for the purpose of securing a more convenient access to the workshops of the United States armory at that place, and to give and receive deeds to and from the persons lawfully holding the land thus obtained from the United States, and the legal owners of the land, the occupancy of which was transferred to the United States in exchange therefor.

Approved, June 17, 1844.

No. 95.—An Act to quiet the titles to certain lots of land in the towns of Perrysburg and Croghansville, in the State of Ohio.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all titles to town lots and out lots in the towns of Perrysburg and Croghansville, in the State of Ohio, derived from said State under color of the grant made to said State by virtue of the act of Congress entitled "An act for laying out and making a road from the lower rapids of the Miami of Lake Erie to the western boundary of the Connecticut western reserve, in the State of Ohio, agreeably to the provisions of the treaty of Brownstown," approved the twenty-eighth of February, one thousand eight hundred and twenty-three, be, and the same are hereby, recognized as valid and confirmed, in the same manner as though the title to said lots had been vested in the State under the aforesaid act: *Provided,* That the authorities of the said State shall, within one year from and after the passage of this act, furnish the Commissioner of the General Land Office with a certified list of all lots heretofore sold and disposed of under color of the above recited act: *And provided also,* That all the confirmations intended by this act shall amount only to a relinquishment forever, on the part of the United States, of all their right

and title whatever to the lots of land so confirmed : *And provided further*, That nothing in this act contained shall be construed to comprehend within the provisions thereof such town lots, and out lots, or other tract or tracts of land, as may have been reserved, or directed to be reserved, within the limits of either of said towns of Perrysburg or Croghansville, for the support of schools within the same, in and by the third section of the act entitled "An act providing for the sale of the tract of land at the lower rapids of Sandusky river," or in and by any provision contained in the act entitled "An act providing for the sale of the tract of land at the British fort of the Miami of the Lake, at the foot of the rapids, and for other purposes." But all such town lots and out lots, or other tract or tracts of land, reserved, or directed to be reserved, as aforesaid, shall be holden subject to the uses and trusts in said acts, and in other acts relating to such reserves, designated or intended. But nothing contained in this act shall prevent the original purchasers of the lots or lands within the limits of the said towns of Perrysburg and Croghansville, and not relinquished to the United States, from paying to the State of Ohio or the General Government for the use of said road or the United States the money with the interest remaining due thereon, on all such lots and lands as may not have heretofore been disposed of by the authorities of the said State for the benefit of said road.

Approved, February 20, 1845.

No. 96.—An Act to organize a new land district in the southern part of the State of Arkansas.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the section of country in the southern part of the State of Arkansas, south of the base line, and east of the meridian, comprised within the following boundaries, to wit : between the line dividing ranges five and six on the east, the line dividing ranges twenty and twenty-one on the west, the dividing line between townships ten and eleven on the north, and the State line on the south, be made to form a separate district, to be called the Champagnole district, the seat of the land office for which shall be at the town of Champagnole, and be subject to removal by the President of the United States, whenever, in his judgment, it may be proper so to do.

SEC. 2. *And be it further enacted*, That there shall be a register and receiver of public moneys appointed for said land district, who shall give security in the same manner and in the same sums, and whose duties and authority, compensation and emoluments, shall in every respect be the same, in relation to the lands to be disposed of in said district, as are or may be provided by law in relation to the registers and receivers of public money in the several offices established for the sale of the public lands.

SEC. 3. *And be it further enacted*, That it shall be the duty of the registers and receivers for the districts of land subject to sale at Little Rock and Washington, in the State aforesaid, under the direction of the Commissioner of the General Land Office, to transfer to the register and receiver for the district hereby created all the proper evidences, documents, records, and township plats, in relation to lands heretofore sold or subject to sale at those offices, respectively, which fall within the limits of the district hereby created.

SEC. 4. *And be it further enacted*, That this act shall take effect and be

in force from and after the expiration of three calendar months from the date of the passing hereof.

Approved, February 20, 1845.

No. 97.—An Act to amend an act entitled “An act to carry into effect, in the States of Alabama and Mississippi, the existing compacts with those States with regard to the five per cent. fund and the school reservations.”

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of the fourth section of the act entitled “An act to carry into effect, in the States of Alabama and Mississippi, the existing compacts with those States with regard to the five per cent. fund and the school reservations,” as purports to require that a quantity of land, equal to the one thirty-sixth part of the lands lying within the State of Alabama, which were disposed of, or directed to be disposed of, in and by the treaty between the United States and the Chickasaw Indians, made and concluded at the city of Washington on the twenty fourth day of May, one thousand eight hundred and thirty-four, shall be selected, under the direction of the Secretary of the Treasury, within any land district, in said State of Alabama, contiguous to said lands within said State so disposed of, &c., by the said Chickasaws, as aforesaid, be, and the same is hereby, repealed: *Provided,* That nothing herein contained shall be so construed as in any wise to affect the validity and binding force of any such selections as may heretofore have been made, in virtue of said fourth section, and sanctioned and accepted by the inhabitants of those surveyed townships, respectively, for whom they may have been made as an equivalent and substitute for section number sixteen, within such surveyed township.

SEC. 2. *And be it further enacted,* That said lands, equal in quantity to one thirty-sixth part of the lands so, in virtue of said treaty, disposed of, &c., within said state of Alabama, (deducting therefrom such quantity, if any, as may have been selected, as aforesaid, under the authority of said fourth section, and accepted, as aforesaid, in lieu of said section number sixteen, by the inhabitants of the proper surveyed township,)* may be selected under the direction of the Governor of Alabama, at any time within two years from the passing of this act, in sections, half sections, quarter sections, or previously defined fractions, out of any of the surveyed public lands, within any of the land districts in the States of Alabama or Mississippi, subject to sale at private sale, and not in any wise encumbered by any prior claim, lien, or reservation, as the Governor of the said State of Alabama may direct. But the same selections, respectively, shall not be holden to have been perfected, until the same, as from time to time they shall have been made, shall have been reported to the Commissioner of the General Land Office, together with proofs, taken in such manner as the Legislature of the State of Alabama shall prescribe, of the assent of the inhabitants of the surveyed townships, respectively, for whose benefit the same may have been selected; and that the said inhabitants consent to and accept the same in lieu of, and as a full equivalent for, the school section which, by the sixth section of the act entitled “An act to enable the people of the Alabama Territory to form a Constitution and State

* See No. 240.

Government, and for the admission of such State into the Union, on an equal footing with the original States," was guarantied to them.

SEC. 3. *And be it further enacted*, That when the land shall have been so as aforesaid selected and reported, and, as aforesaid, so accepted by said inhabitants of said surveyed township, respectively, the same shall vest in the State of Alabama, subject to the same disposition and uses; and shall be holden subject to the same conditions and terms, in all respects whatsoever, as, by the said sixth section of the act herein above referred to, were prescribed or intended in relation to sections number sixteen, within said State of Alabama. And it shall be competent for the said Governor of Alabama, as from time to time such selections may be made, and before they are perfected as aforesaid, to give notice thereof to the register of the proper land office of the land district in which such selection may be made, in such form as the Commissioner of the General Land Office shall prescribe; and thereupon, the land so selected shall, during such convenient time as such Commissioner of the General Land Office may prescribe, be considered, for the time being, as withdrawn from sale, and not subject to entry.

Approved, February 26, 1845.

No. 98.—An Act to authorize a relocation of land warrants number three, four, and five, granted by Congress to General Lafayette.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the legal holders or assignees of land warrants numbered three, four, and five, granted by the act of Congress of twenty-seventh March, one thousand eight hundred and four, to General Lafayette, and located at Point Coupee, in the State of Louisiana, in three adjoining surveys of one thousand acres each, and which locations are shown to have been made in material conflict with several older and better grants, shall, upon exhibiting to the register and receiver of any land office within the State of Louisiana, his or their evidence of right to the warrants above described, be permitted, under the same rules and restrictions of the original law under which said locations were authorized, to enter and locate a like quantity of land on any of the unappropriated public lands in the State of Louisiana: *Provided*, That, before any such register and receiver shall issue to such holders or assignees any certificate of relocation, the holders or assignees shall deposite a copy of their deraignment of title from General Lafayette, and a release of title to the lands located at Point Coupee.

Approved, February 26, 1845.

No. 99.—An Act to grant certain lands to the State of Indiana, the better to enable the said State to extend and complete the Wabash and Erie canal from Terre Haute to the Ohio river.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be, and hereby is, granted to the State of Indiana for the purpose of aiding said State in

extending and completing the Wabash and Erie canal from Terre Haute, in the county of Vigo, in said State, to the Ohio River, at Evansville, in said State, as the course thereof has been established and surveyed by the authority of said State, one moiety of the public lands, (remaining unsold, and not otherwise disposed of, encumbered or appropriated,) in a strip five miles in width on each side of said canal; to be selected by an agent or agents to be appointed by the Governor of said State, subject to the approval of the Secretary of the Treasury of the United States; reserving to the United States each alternate section, (or other proper subdivision of said land) from one end of said canal to the other; and before the selection, to be made as aforesaid by such agent or agents, shall be deemed to have been made and perfected, a chart or charts, showing the courses and distances and points of termination of said canal, shall be reported, or caused to be reported by the Governor of Indiana, or by some person or persons by him appointed to the Commissioner of the General Land Office.

SEC. 2. *And be it further enacted*, That, for the purpose hereinbefore mentioned, there be, and hereby is, granted to the said State, in addition to the grant hereinbefore provided for, one moiety of all the other lands in the Vincennes land district, in said State, and which remain, as aforesaid, unsold, and not otherwise disposed of, encumbered or appropriated, to be selected under the authority and by the direction of the Governor of said State: *Provided*, That, in the selection of the lands by this section provided for, no lands shall be comprehended which, in and by the first section of this act, are (in alternate sections or other proper subdivisions) directed to be reserved as aforesaid; and the lands so selected shall be reported, or caused to be reported, by the Governor of said State, to the register of the land office at Vincennes, before such selection shall be deemed to be made and completed.

SEC. 3. *And be it further enacted*, That all the lands, by the first and second sections of this act granted as aforesaid, shall, after the selections thereof shall have been made and completed as aforesaid, be subject to be disposed of by the General Assembly of said State, for the purpose aforesaid, and no other; and the President shall direct the further sales of the public lands, in the Vincennes land district aforesaid, to be suspended until the Governor of said State shall have caused the selections aforesaid to be made and perfected as aforesaid, and shall have notified the Secretary of the Treasury thereof: *Provided*, That such suspension shall not continue longer than twelve months from and after the passing of this act.

SEC. 4. *And be it further enacted*, That the said canal when completed, shall be and forever remain a public highway for the use of the Government of the United States, free from any toll or other charge whatever, for any property of the United States, or persons in their service, passing through or along the same; and shall be completed within fifteen years from and after the passing of this act, or the State shall be holden to pay to the United States the amount of the price or prices for which any and all of said land which may have been disposed of by said State may have sold; and such of said lands as may not have been thus disposed of shall, from and after said fifteen years, if said canal should not then have been completed, revert to and again become the property of the United States: *Provided always*, That it shall not be competent for the said General Assembly to dispose of said lands, or any of them, at a price lower than, for the time being, shall be the minimum price of other public lands.

Approved, March 3, 1845.

NO. 100.—An Act to confirm the survey and location of claims for lands in the State of Mississippi, east of the Pearl river, and south of thirty-first degree of north latitude.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all surveys and plats of confirmed claims and settlement rights for lands situate in the State of Mississippi, east of Pearl river, and south of thirty-first degree of north latitude, which had been made and returned to the surveyor generals office south of Tennessee on or before the first day of January, one thousand eight hundred and thirty-nine, shall be, and are hereby, confirmed, as actually surveyed on the ground; and the said surveyor general is hereby authorized and directed, on the request of any party interested in any such claim, to certify the return and plat of such actual survey, so remaining in his office, to the register and receiver for lands in the Augusta district, in said State, who are hereby directed to receive and regard said surveys, plats, and location of the claims they represent, as correctly made; and the said register and receiver shall thereupon issue, in the name of the confirmer of the claim a patent certificate for each claim; which certificate, being first duly recorded in the said register's office, shall be delivered to such person as is entitled to represent the claim, and which, being presented to the General Land Office at Washington, shall entitle the party interested to a patent therefor: *Provided*, That any claimant to a tract of land so surveyed and platted as aforesaid, who shall within one year from the passage of this act, file, in writing, with the surveyor general south of Tennessee, his exception to the regularity of the survey so heretofore made, setting forth in what respect said survey is erroneous, the surveyor general shall examine such exception, and if found to be well taken, shall order a resurvey of the claim, and after proper notice to the party interested; and, after proper notice, he may order a resurvey of any other claims which, in his opinion, may be indispensably necessary, by reason of errors or defects in the survey, on the ground, which, being returned and approved, shall be certified to the register and receiver at Augusta, on which a patent certificate shall be issued, as before directed: *Provided also*, That all actual surveys of claims in said district, which shall not be excepted to within the year aforesaid, or which the surveyor general may not find it indispensably necessary to have resurveyed by reason of any errors or defects, as aforesaid, shall, after that time, be deemed unexceptionable, so far as relates to the title of the United States, and shall thenceforth be proceeded in and perfected to patent.

SEC. 2. *And be it further enacted*, That all resurveys which may be ordered by virtue of this act shall be executed under the direction of the surveyor south of Tennessee, subject to orders from the General Land Office; and all services which shall be rendered in execution of this act shall be audited, charged, and paid for, as similar services were required to be by former laws and regulations in reference to similar claims.

SEC. 3. *And be it further enacted*, That when, in any case it shall appear to the surveyor general that the survey of any claim hereby confirmed is deficient in the quantity of land confirmed to the claimant, by a number of acres equal to forty or more, then the said surveyor general shall issue to the claimant a warrant, entitling him to a quantity of land, which in the subdivision of the public lands of the United States, shall not exceed in quantity the number of acres found deficient in the claimant's original survey; which entry may be made on any lands subject to entry in said district.

SEC. 4. *And be it further enacted*, That this act shall not be construed as aiding the title survey or location of any claim, to the prejudice of any other claim with which its pretensions and location may conflict; but all such conflicting rights and locations shall remain subject to existing laws; *Provided however*, That, in any such case of conflict, in addition to the powers conferred on the surveyor general by this act, it shall be lawful for him, when the conflicting claimants may compromise, by the relinquishment of one of the claimants of his entire location, or so much of it as conflicts with the location of another claim, to grant a warrant to the relinquishing claimant, which shall entitle him to enter an equal quantity with the land relinquished of any land subject to entry in the district of the land surrendered.

SEC. 5. *And be it further enacted*, That all confirmation and evidence of title which shall be made or issued in the name of the original claimant or confirmer, by virtue of this act, shall inure to the use and benefit of those who may be jointly or severally entitled to the lands in the several claims referred to, either by descent or purchase, as if such persons were specially named therein.

Approved, March 3, 1845.

No. 101.—An Act for the admission of the States of Iowa and Florida into the Union.

Whereas, the people of the Territory of Iowa did, on the seventh day of October, eighteen hundred and forty-four, by a convention of delegates called and assembled for that purpose, form for themselves a constitution and State government; and whereas, the people of the Territory of Florida did, in like manner, by their delegates, on the eleventh day of January, eighteen hundred and thirty-nine, form for themselves a constitution and State government, both of which said constitutions are republican; and said conventions having asked the admission of their respective Territories into the Union as States, on equal footing with the original States:*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the States of Iowa and Florida be, and the same are hereby, declared to be States of the United States of America, and are hereby admitted into the Union on equal footing with the original States, in all respects whatsoever.

SEC. 2. *And be it further enacted*, That the following shall be the boundaries of the said State of Iowa, to wit: Beginning at the mouth of the Des Moines river, at the middle of the Mississippi, thence by the middle of the channel of that river to a parallel of latitude passing through the mouth of the Mankato, or Blue-Earth river, thence west along the said parallel of latitude to a point where it is intersected by a meridian line, seventeen degrees and thirty minutes west of the meridian of Washington city, thence due south to the northern boundary line of the State of Missouri, thence easterly following that boundary to the point at which the same intersects the Des Moines river, thence by the middle of the channel of that river to the place of beginning.†

SEC. 3. *And be it further enacted*, That the said State of Iowa shall

* See Nos. 102, 103, 111.

† Section 2 repealed by act of fourth August, 1846. No. 111.

have concurrent jurisdiction on the river Mississippi, and every other river bordering on the said State of Iowa, so far as the said rivers shall form a common boundary to said State, and any other State or States now or hereafter to be formed or bounded by the same: Such rivers to be common to both: And that the said river Mississippi, and the navigable waters leading into the same, shall be common highways, and forever free as well to the inhabitants of said State, as to all other citizens of the United States, without any tax, duty, impost, or toll therefor, imposed by the said State of Iowa.

* * * * *

SEC. 5. *And be it further enacted*, That said State of Florida shall embrace the territories of East and West Florida, which by the treaty of amity, settlement and limits between the United States and Spain, on the twenty-second day of February eighteen hundred and nineteen, were ceded to the United States.

SEC. 6. *And be it further enacted*, That until the next census and apportionment shall be made, each of said States of Iowa and Florida, shall be entitled to one representative in the House of Representatives of the United States.

SEC. 7. *And be it further enacted*, That said States of Iowa and Florida are admitted into the Union on the express condition that they shall never interfere with the primary disposal of the public lands lying within them, nor levy any tax on the same whilst remaining the property of the United States: *Provided*, That the ordinance of the convention that formed the constitution of Iowa, and which is appended to the said constitution, shall not be deemed or taken to have any effect or validity, or to be recognized in any manner obligatory upon the Government of the United States.

Approved, March 3, 1845.



No. 102.—An Act supplemental to the act for the admission of Florida and Iowa into the Union, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in consideration of the concessions made by the State of Florida in respect to the public lands, there be granted to the said State eight entire sections of land for the purpose of fixing their seat of Government; also, section number sixteen in every township, or other lands equivalent thereto, for the use of the inhabitants of such township, for the support of public schools; also, two entire townships of land, in addition to the two townships already reserved, for the use of two seminaries of learning—one to be located east, and the other west of the Suwannee river; also, five per centum of the net proceeds of the sale of lands within said State, which shall be hereafter sold by Congress, after deducting all expenses incident to the same; and which said net proceeds shall be applied by said State for the purposes of education.

* * * * *

Approved, March 3, 1845.

No. 103.—An Act supplemental to the act for the admission of the States of Iowa and Florida into the Union.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the laws of the United States, which are not locally inapplicable, shall have the same force and effect within the State of Iowa as elsewhere within the United States.

* * * * *

SEC. 6. *And be it further enacted,* That in lieu of the propositions submitted to the Congress of the United States, by an ordinance passed on the first day of November, eighteen hundred and forty-four, by the convention of delegates at Iowa city, assembled for the purpose of making a constitution for the State of Iowa, which are hereby rejected, the following propositions be, and the same are hereby, offered to the legislature of the State of Iowa, for their acceptance or rejection; which, if accepted, under the authority conferred on the said legislature, by the convention which framed the constitution of the said State, shall be obligatory upon the United States:

First. That section numbered sixteen in every township of the public lands, and, where such section has been sold or otherwise disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to the State for the use of schools.

Second. That the seventy-two sections of land set apart and reserved for the use and support of a university, by an act of Congress approved on the twentieth day of July, eighteen hundred and forty, entitled "An act granting two townships of land for the use of a university in the Territory of Iowa," are hereby granted and conveyed to the State, to be appropriated solely to the use and support of such university, in such manner as the legislature may prescribe.

Third. That five entire sections of land, to be selected and located under the direction of the legislature, in legal divisions of not less than one quarter section, from any of the unappropriated lands belonging to the United States within the said State, are hereby granted to the State for the purpose of completing the public buildings of the said State, or for the erection of public buildings at the seat of government of the said State, as the legislature may determine and direct.

Fourth. That all salt springs within the State, not exceeding twelve in number, with six sections of land adjoining, or as contiguous as may be to each, shall be granted to the said State for its use; the same to be selected by the legislature thereof, within one year after the admission of said State, and the same, when so selected, to be used on such terms, conditions, and regulations, as the legislature of the State shall direct: *Provided*, That no salt spring, the right whereof is now vested in any individual or individuals, or which may hereafter be confirmed or adjudged to any individual or individuals, shall, by this section, be granted to said State: *And provided also*, That the General Assembly shall never lease or sell the same, at any one time, for a longer period than ten years, without the consent of Congress.

Fifth. That five per cent. of the net proceeds of sales of all public lands lying within the said State, which have been, or shall be sold by Congress, from and after the admission of said State, after deducting all the expenses incident to the same, shall be appropriated for making public roads and canals within the said State, as the legislature may direct: *Provided*, That the five foregoing propositions herein offered are on the condition that the

legislature of the said State, by virtue of the powers conferred upon it by the convention which framed the constitution of the said State, shall provide, by an ordinance, irrevocable without the consent of the United States, that the said State shall never interfere with the primary disposal of the soil within the same by the United States, nor with any regulations Congress may find necessary for securing the title in such soil to the bona fide purchasers thereof; and that no tax shall be imposed on lands the property of the United States; and that in no case shall non-resident proprietors be taxed higher than residents; and that the bounty lands granted, or hereafter to be granted, for military services during the late war, shall, while they continue to be held by the patentees or their heirs, remain exempt from any tax laid by order or under the authority of the State, whether for State, county, township, or any other purpose, for the term of three years from and after the date of the patents, respectively.

Approved, March 3, 1845.

No. 104.—An Act to repeal a part of the act entitled “An act supplementary to the several laws for the sale of the public lands,” approved April fifth, one thousand eight hundred and thirty-two, and for other purposes.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the passage of this act, the second proviso to the act entitled “An act supplementary to the several laws for the sale of the public lands,” approved April fifth, one thousand eight hundred and thirty-two, which is as follows, viz: “That no person shall be permitted to enter more than one-half quarter section of land under this act in quarter-quarter sections, in his own name, or in the name of any other person, and in no case unless he intends it for cultivation, or for the use of his improvement. And the person making application to make an entry under this act shall file his or her affidavit, under such regulations as the Secretary of the Treasury may prescribe, that he or she makes the entry in his or her own name, for his or her own benefit, and not in trust for another,” shall be, and the same is hereby repealed; and all entries, selections, or locations of lands now suspended in the General Land Office, because made contrary to the restrictions in this proviso, shall be, and they are hereby confirmed, provided they are in all other respects fair and regular.

Approved, May 8, 1846.

No. 105.—An Act to authorize the President of the United States to sell the reserved mineral lands in the States of Illinois and Arkansas, and Territories of Wisconsin and Iowa, supposed to contain lead ore.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President be, and he hereby is, authorized, as soon as practicable, to cause the reserved lead mines and contiguous lands in the States of Illinois and Arkansas, and

* See No. 24.

Territories of Wisconsin and Iowa, belonging to the United States, to be exposed to sale, in the same manner that other public lands are authorized by law to be sold, except as hereinafter provided.

SEC. 2. *And be it further enacted*, That six months' notice of the times and places of said sales shall be given in such newspapers of general circulation, in such of the States as the President may think expedient, with a brief description of the mineral regions of the States of Illinois and Arkansas, and Territories of Wisconsin and Iowa, and of the lands to be offered for sale; showing the number and localities of the different mines now known, the probability of discovering others, the quality of the ore, the facilities of working it, the further facilities (if any) for manufactories of shot, sheet lead, and paints, and the means and expense of transporting the whole to the principal markets in the United States: *Provided*, That the said lands shall not be subject to the rights of pre-emption until after the same have been offered at public sale and subject to private entry.

SEC. 3. *And be it further enacted*, That upon satisfactory proof made to the register and receiver of the proper land office, that any tract or tracts of said lands contain a mine or mines of lead ore, actually discovered and being worked, then, and in that case, the same shall be sold in such legal subdivision or subdivisions as will include such mine or mines; and no bid shall be received therefor at a less rate than the sum of two dollars and fifty cents per acre; and if such tract or tracts shall not be sold at such public sale, at such price, nor shall be entered at private sale within twelve months thereafter, then the same shall be subject to sale as other lands: *Provided*, That no legal subdivision of any of said lands, upon which there may be an outstanding lease or leases from the Government of the United States, or their authorized agent, unexpired and undetermined, shall be sold until after the determination of such lease or leases by effluxion of time, voluntary surrender, or other legal extinguishment thereof.

Approved, July 11, 1846.

No. 106.—An Act to legalize certain land sales made at Chocchuma and Columbus, in the State of Mississippi, and to indemnify the Chickasaws therefor.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it may and shall be lawful for patents to be issued, as in ordinary cases, for such of the sales of land made in the land offices at Chocchuma and Columbus, in the State of Mississippi, as may be found, by the definitely established line of the Chickasaw cession of one thousand eight hundred and thirty-four, to be, in whole or part, within that cession, and the said sales are hereby confirmed and legalized; and for the purpose of indemnifying the Chickasaw tribe of Indians for said sales, there is hereby appropriated, out of any moneys in the treasury not otherwise appropriated, a sum of money equal to all which has been received upon said sales, to the fund created by the treaty with said Chickasaw tribe, and of right to them belonging: *Provided nevertheless*, That this act shall not extend to any sale where the purchase-money may have been refunded to the purchaser.

Approved, July 15, 1846.

No. 107.—An Act further to extend the time for locating Virginia military land warrants, and returning surveys thereon to the General Land Office.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act entitled "An act further to extend the time for locating Virginia military land warrants, and returning surveys thereon to the General Land Office," approved August nineteen, eighteen hundred and forty-one, as to all warrants issued prior to the tenth day of August, eighteen hundred and forty, and no others, be, and the same is hereby, revived and continued in force until the first day of January, eighteen hundred and forty-eight.

Approved, July 29, 1846.

No. 108.—An Act giving the assent of Congress to a change of the compact entered into between the United States and the State of Arkansas, on her admission into the Union.

Whereas the Congress of the United States, by an act supplementary to an act for the admission of the State of Arkansas into the Union, and to provide for the due execution of the laws of the United States within the same, and for other purposes, approved June twenty-third, eighteen hundred and thirty-six, in the fifth proposition made to the State of Arkansas, and which was subsequently accepted by the General Assembly of the State of Arkansas, provided that the two entire townships of land located by virtue of an act of Congress entitled "An act concerning a seminary of learning in the Territory of Arkansas," approved the second day of March, eighteen hundred and twenty-seven, which, by the first recited act of Congress, were vested in and confirmed to the General Assembly of the State of Arkansas, to be appropriated solely to the use and support of a university in said State: And whereas the General Assembly of the State of Arkansas have, by their resolution, approved December eighteen, eighteen hundred and forty-four, asked for a modification of said compact to authorize said General Assembly to appropriate said seventy-two sections of land to common school purposes: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the assent of Congress be, and is hereby, given to the change in said compact asked for by the said General Assembly, so as to authorize and empower the General Assembly of the State of Arkansas, and they are hereby authorized and empowered, to appropriate said seventy-two sections of land for the use and benefit of common schools in said State, or in any other mode the said General Assembly may deem proper, for the promotion of education in said State.

Approved, July 29, 1846.

No. 109.—An Act to grant the right of pre-emption to actual settlers on the lands acquired by treaty from the Miami Indians in Indiana.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That every actual settler, being

the head of a family, or widow or single man over the age of twenty-one years, who is now in possession, by actual residence as a housekeeper, of any tract of public land within the limits of the several cessions by the Miami Indians in Indiana, which have not yet been proclaimed for sale by the President, or any such person who shall hereafter settle, erect a dwelling-house, and become a housekeeper upon any such tract of land, shall be entitled to the same benefits and privileges, with respect to said land, as was granted to settlers on other lands by the act approved twenty-second of June, eighteen hundred and thirty-eight, entitled "An act to grant pre-emption rights," and the several amendatory provisions of said act, effected by the subsequent acts bearing date first June, eighteen hundred and forty, and third March, eighteen hundred and forty-three: *Provided*, That the minimum price per acre of said land shall be two dollars per acre.

SEC. 2. *And be it further enacted*, That in every case the affidavit of the claimant under this act shall be like unto that prescribed by the act of twenty-second June, eighteen hundred and thirty-eight, and the same shall be filed, and proof and payment made for the land claimed, at any time before the day fixed by the President's proclamation for the public sale of the said land: *Provided*, That where a tract of land is now settled upon, a settlement made on such tract subsequent to the date of this law shall confer no right on the last-mentioned settler; and where settlements shall hereafter be made, the right shall be in the first settler, who shall otherwise comply with the conditions of this law.

Approved, August 3, 1846.

No. 110.—An Act providing for the adjustment of all suspended pre-emption land claims in the several States and Territories.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Commissioner of the General Land Office be, and he is hereby, authorized and empowered to determine, upon principles of equity and justice, as recognized in courts of equity, and in accordance with general equitable rules and regulations, to be settled by the Secretary of the Treasury, the Attorney-General, and Commissioner, conjointly, consistently with such principles, all cases of suspended entries now existing in said land office, and to adjudge in what cases patents shall issue upon the same: *Provided however*, That such adjudications shall be made within two years from the passage of this act, and be first approved by the Secretary of the Treasury and the Attorney-General, and shall only operate to divest the United States of the title of the land embraced by such entries, without prejudice to the rights of conflicting claimants.*

SEC. 2. *And be it further enacted*, That the power and jurisdiction given by this act, to the Commissioner of the General Land Office shall cease and determine, at the expiration of two years from the passage thereof; and such Commissioner be, and he is hereby, directed to report to Congress at the first session after the said adjudications shall have been made, a list of the same, and under such classes as he may deem necessary, and of the principles upon which such class was determined.†

SEC. 3. *And be it further enacted*, That the said Commissioner shall

* See No. 227.

† Extended. See No. 148.

arrange his decisions into two classes : the first class to embrace all such cases of equity as may be finally confirmed by the board aforesaid, and the second class to embrace all such cases as the board reject and decide to be invalid.

SEC. 4. *And be it further enacted*, That for all lands covered by entries or sales which are placed in the first class, patents shall issue to the claimants ; and all lands embraced by entries or sales placed in the second class shall *ipso facto* revert to, and become part of, the public domain.

SEC. 5. *And be it further enacted*, That it shall and may be lawful for the Commissioner of the General Land Office to order into market, after due notice, without the formality and expense of a proclamation of the President, all lands of the second class, though heretofore unproclaimed and unoffered, and such other isolated or disconnected tracts or parcels of unoffered lands, which, in his judgment, it would be proper to expose to sale in like manner : *Provided*, That public notice of at least thirty days shall be given by the land officers of the district in which such lands may be situated, pursuant to the directions of the Commissioner aforesaid.

Approved, August 3, 1846.

No. 111.—An Act to define the boundaries of the State of Iowa, and to repeal so much of the act of the third of March, one thousand eight hundred and forty-five, as relates to the boundaries of Iowa.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following shall be, and they are hereby declared to be, the boundaries of the State of Iowa, in lieu of those prescribed by the second section of the act of the third of March, eighteen hundred and forty-five, entitled “An act for the admission of the States of Iowa and Florida into the Union,”* viz : Beginning in the middle of the main channel of the Mississippi river, at a point due east of the middle of the mouth of the main channel of the Des Moines river; thence, up the middle of the main channel of the said Des Moines river, to a point on said river where the northern boundary line of the State of Missouri, as established by the constitution of that State, adopted June twelfth, eighteen hundred and twenty, crosses the said middle of the main channel of the said Des Moines river; thence, westwardly, along the said northern boundary line of the State of Missouri, as established at the time aforesaid, until an extension of said line intersect the middle of the main channel of the Missouri river; thence, up the middle of the main channel of the said Missouri river, to a point opposite the middle of the main channel of the Big Sioux river, according to Nicollet’s map; thence, up the main channel of the said Big Sioux river, according to said map, until it is intersected by the parallel of forty-three degrees and thirty minutes north latitude; thence east, along said parallel of forty-three degrees and thirty minutes, until said parallel intersect the middle of the main channel of the Mississippi river; thence, down the middle of the main channel of said Mississippi river to the place of beginning.

SEC. 2. *And be it further enacted*, That the question which has heretofore been the subject-matter of controversy and dispute between the State of Missouri and the Territory of Iowa, respecting the precise location of the

* See Nos. 101, 102, 103.

northern boundary line of the State of Missouri, shall be, and the same is hereby, referred to the Supreme Court of the United States for adjudication and settlement, in accordance with the act of the Legislature of Missouri, approved March twenty-five, eighteen hundred and forty-five, and the memorial of the Council and House of Representatives of the Territory of the Iowa, approved January seventeen, eighteen hundred and forty-six, by which both parties have agreed to "the commencement and speedy determination of such suit as may be necessary to procure a final decision by the Supreme Court of the United States upon the true location of the northern boundary of that State;" and the said Supreme Court is hereby invested with all the power and authority necessary to the performance of the duty imposed by this section.

SEC. 3. *And be it further enacted*, That, until the next census and apportionment shall be made, the State of Iowa shall be entitled to two Representatives in the House of Representatives of the United States.

SEC. 4. *And be it further enacted*, That so much of the act of the third of March, eighteen hundred and forty-five, entitled "An act for the admission of the States of Iowa and Florida into the Union," relating to the said State of Iowa, as is inconsistent with the provisions of this act, be and the same is hereby repealed.

Approved, August 4, 1846.

No. 112.—An act to repeal an act entitled "An act for the relief of the Stockbridge tribe of Indians in the Territory of Wisconsin," approved March third, eighteen hundred and forty-three, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act entitled "An act for the relief of the Stockbridge tribe of Indians in the Territory of Wisconsin,"* approved March third, eighteen hundred and forty-three, be and the same is hereby repealed; and the said Stockbridge tribe or nation of Indians is restored to their ancient form of government, with all powers, rights, and privileges held and exercised by them under their customs and usages, as fully and completely as though the above recited act had never passed.

SEC. 2. *And be it further enacted*, That the sub-agent of Indian affairs at Green Bay, under the direction of the Governor of Wisconsin, who shall be a commissioner for this purpose, shall be required to open a book for the enrolment of the names of such persons of the Stockbridge tribe of Indians as shall desire to become and remain citizens of the United States, immediately upon the passage of this law; and three months shall be allowed after the opening of said books for the enrolment, within which time it shall be the duty of all desiring citizenship to come forward in person and file their application. After the expiration of the three months, the said sub-agent shall divide the said township of land now held by the Stockbridges on the Winnebago lake into two districts, to be known and designated as the Indian district and the citizen district, according to the strength and numbers of their respective parties, and the laws and usages in said tribe. The lands in the Indian district are to remain and to be held in common; those in the citizen district are to be divided; and to

* See Nos. 76.

each Indian who becomes a citizen the said sub-agent shall assign, by distinct metes and bounds, his ratable proportion of land. And, after the division and allotment are completed, it shall be the duty of the said sub-agent to make out three copies of the divisions thus made, one of which he shall file with the clerk of the district court of the county in which the citizen district of land may be situated; one other copy he shall file in the land office at Green Bay, in Wisconsin Territory; and the other shall be returned to the Secretary of War. And, upon the receipt of the said return by the Secretary of War, patents may be issued to the individual reservees who become citizens, upon the receipt of which a title in fee simple to the lot of land shall vest in the patentee; and all transfers and assignments of the land made previous to the issuance of the patent shall be null and void: *Provided however*, That those Indians who become citizens shall forfeit all right to receive any portion of the annuity which may now be or may become due the nation of Stockbridges, by virtue of any treaty heretofore entered into by this Government with said Stockbridges.

SEC. 3. *And be it further enacted*, That, in consideration of the moneys paid by said Stockbridge nation of Indians to the Winnebagoes and Menomonies in the years eighteen hundred and twenty-one and eighteen hundred and twenty-two, and all other claims, the sum of five thousand dollars be paid to said tribe of Indians by the Secretary of War; and for this purpose the said sum of five thousand dollars be and the same is hereby appropriated out of any money in the Treasury not otherwise appropriated: *Provided*, That nothing in this act contained shall be construed to impair any claim which said nation may have upon the Delaware nation to a share of the lands assigned to them west of the Missouri river.

Approved, August 6, 1846.

No. 113.—An Act to enable the people of Wisconsin Territory to form a constitution and State Government, and for the admission of such State into the Union.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the people of the Territory of Wisconsin be and they are hereby authorized to form a Constitution and State Government, for the purpose of being admitted into the Union on an equal footing with the original States in all respects whatsoever, by the name of the State of Wisconsin, with the following boundaries, to wit: Beginning at the northeast corner of the State of Illinois—that is to say, at a point in the centre of Lake Michigan where the line of forty-two degrees and thirty minutes of north latitude crosses the same; thence, running with the boundary line of the State of Michigan, through Lake Michigan, Green Bay, to the mouth of the Menomonic river; thence up the channel of said river to the Brulé river; thence up said last mentioned river to Lake Brulé; thence along the southern shore of Lake Brulé in a direct line to the centre of the channel between Middle and South islands, in the Lake of the Desert; thence in a direct line to the headwaters of the Montreal river, as marked upon the survey made by Captain Cramm; thence down the main channel of the Montreal river to the middle of Lake Superior; thence through the centre of Lake Superior to the mouth of the St. Louis river; thence up the main channel of said river to the first rapids in the same, above the Indian village, according to Nicollet's map; thence due south to the main branch of the river St. Croix; thence down the main

channel of said river to the Mississippi; thence down the centre of the main channel of that river to the northwest corner of the State of Illinois; thence due east with the northern boundary of the State of Illinois to the place of beginning, as established by "An act to enable the people of the Illinois Territory to form a Constitution and State Government, and for the admission of such State into the Union on an equal footing with the original States," approved April eighteen, eighteen hundred and eighteen."

SEC. 2. *And be it further enacted*, That, to prevent all disputes in reference to the jurisdiction of islands in the said Brulé and Menomonie rivers, the line be so run as to include within the jurisdiction of Michigan, all the islands in the Brule and Menomonie rivers, (to the extent in which said rivers are adopted as a boundary,) down to, and inclusive of, the Quinnesec falls of the Menomonie; and from thence the line shall be so run as to include within the jurisdiction of Wisconsin all the islands in the Menomonie river, from the falls aforesaid down to the junction of said river with Green bay: *Provided*, That the adjustment of boundary, as fixed in this act, between Wisconsin and Michigan shall not be binding on Congress unless the same shall be ratified by the State of Michigan on or before the first day of June, one thousand eight hundred and forty-eight.

SEC. 3. *And be it further enacted*, That the said State of Wisconsin shall have concurrent jurisdiction on the Mississippi, and all other rivers and waters bordering on the said State of Wisconsin, so far as the same shall form a common boundary to said State and any other State or States now or hereafter to be formed or bounded by the same; and said river and waters, and the navigable waters leading into the same, shall be common highways, and forever free, as well to the inhabitants of said State as to all other citizens of the United States, without any tax, duty, impost, or toll therefor.

SEC. 4. *And be it further enacted*, That from and after the admission of the State of Wisconsin into the Union, in pursuance of this act, the laws of the United States, which are not locally inapplicable, shall have the same force and effect within the State of Wisconsin as elsewhere within the United States; and said State shall constitute one district, and be called the district of Wisconsin; and a district court shall be held therein, to consist of one judge, who shall reside in the said district and be called a district judge. He shall hold at the seat of government of said State two sessions of said court annually, on the first Mondays in January and July, and he shall in all things have and exercise the same jurisdiction and powers which were by law given to the judge of the Kentucky district, under an act entitled "An act to establish the judicial courts of the United States." He shall appoint a clerk for said district, who shall reside and keep the records of said court at the place of holding the same; and shall receive for the services performed by him the same fees to which the clerk of the Kentucky district is by law entitled for similar services. There shall be allowed to the judge of said district court the annual compensation of fifteen hundred dollars, to commence from the date of his appointment, to be paid quarterly to the Treasury of the United States.

SEC. 5. *And be it further enacted*, That there shall be appointed in said district a person learned in the law to act as attorney of the United States, who, in addition to the stated fees, shall be paid the sum of two hundred dollars annually by the United States, as a full compensation for all extra services; the said payment to be made quarterly at the Treasury of the United States. And there shall also be appointed a marshal for said district, who shall perform the same duties, be subject to the same regulations and penalties, and be entitled to the same fees, as are prescribed and

allowed to marshals in other districts; and shall, moreover, be allowed the sum of two hundred dollars annually as a compensation for all extra services.

SEC. 6. *And be it further enacted*, That, until another census shall be taken and apportionment made, the State of Wisconsin shall be entitled to two Representatives in the Congress of the United States.

SEC. 7. *And be it further enacted*, That the following propositions are hereby submitted to the convention which shall assemble for the purpose of forming a constitution for the State of Wisconsin, for acceptance or rejection; and if accepted by said convention, and ratified by an article in said constitution, they shall be obligatory on the United States:

First. That section numbered sixteen, in every township of the public lands in said State, and, where such section has been sold or otherwise disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to said State for the use of schools.

Second. That the seventy-two sections or two entire townships of land set apart and reserved for the use and support of a university by an act of Congress, approved on the twelfth day of June, eighteen hundred and thirty-eight, entitled "An act concerning a seminary of learning in the Territory of Wisconsin," are hereby granted and conveyed to the State, to be appropriated solely to the use and support of such university, in such manner as the Legislature may prescribe.

Third. That ten entire sections of land, to be selected and located under the direction of the Legislature, in legal divisions of not less than one quarter section, from any of the unappropriated lands belonging to the United States within the said State, are hereby granted to the said State, for the purpose of completing the public buildings of the said State, or for the erection of others at the seat of government, under the direction of the Legislature thereof.

Fourth. That all salt springs within said State, not exceeding twelve in number, with six sections of land adjoining, or as contiguous as may be to each, shall be granted to the State for its use; the same to be selected by the Legislature thereof within one year after the admission of said State; and, when so selected, to be used or disposed of on such terms, conditions, and regulations as the Legislature shall direct: *Provided*, That no salt spring or land, the right whereof is now vested in any individual or individuals, or which may hereafter be confirmed or adjudged to any individual or individuals, shall, by this section, be granted to said State.*

Fifth. That five per cent. of the nett proceeds of sales of all public lands lying within the said State, which have been or shall be sold by Congress, from and after the admission of said State into the Union, after deducting all the expenses incident to the same, shall be paid to the said State for the purpose of making public roads and canals in the same, as the Legislature shall direct: *Provided*, That the foregoing propositions herein offered are on the condition that the said convention which shall form the constitution of said State shall provide by a clause in said constitution, or an ordinance, irrevocable without the consent of the United States, that said State shall never interfere with the primary disposal of the soil within the same by the United States, nor with any regulations Congress may find necessary for securing the title in such soil to bona fide purchasers thereof; and that no tax shall be imposed on lands the property of the United States; and that in no case shall non-resident proprietors be taxed higher than residents.

Approved, August 6, 1846.

* Time extended, see No. 191: Relinquished to State, No. 259.

No. 114.—An Act to provide for the confirmation of certain settlement claims in the Greensburg land district, Louisiana.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the second proviso of the third section of the act of eighth May, eighteen hundred and twenty-two, entitled “An act supplementary to the several acts for adjusting the claims to land and establishing land offices in the districts east of the island of New Orleans,” shall not apply to the reports dated eighteenth November, eighteen hundred and twenty, and twenty-fourth July, eighteen hundred and twenty-one, of Cosby and Skipwith, on settlement claims in that part of Louisiana which lies east of the Mississippi river and west of Pearl river; but such claims which, according to the said reports, were inhabited or cultivated, or where the date of settlement was before the fifteenth April, eighteen hundred and thirteen, are hereby confirmed under the other restrictions of said third section, but this confirmation shall in no manner affect prior rights, and shall only amount to a relinquishment on the part of the United States.

Approved, August 6, 1846.

No. 115.—An Act to surrender to the State of Tennessee all title the United States have to lands in Tennessee south and west of the line commonly called the Congressional reservation line, and to release to said State the proceeds of such of said lands as may have been sold by the State of Tennessee as the agent of the United States.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the United States hereby release and surrender to the State of Tennessee the right and title of the United States to all lands in the State of Tennessee lying south and west of the Congressional reservation line in said State which may yet remain unappropriated, and further release and transfer to said State of Tennessee the proceeds of such of said lands as may have been sold by said State, not heretofore paid over to the United States, nor deposited subject to the order or use of the United States, under the authority of the act of Congress of the eighteenth of February, eighteen hundred and forty-one, entitled “An act to amend an act entitled ‘An act to authorize the State of Tennessee to issue grants and perfect titles to certain lands therein described, and to settle the claims to the vacant and unappropriated lands within the same,’ passed the eighteenth day of April, one thousand eight hundred and six.” This surrender and transfer is upon the express condition that the State of Tennessee shall, out of the proceeds of said lands, set apart and apply forty thousand dollars towards the establishment and support of a college at Jackson, in the county of Madison, in the State of Tennessee, if the proceeds of the sales of said lands shall amount to so much; and if the aggregate amount of said sales (not paid over nor deposited as aforesaid) shall not amount to the said sum, then whatever sum smaller than forty thousand dollars they may amount to, in accordance with the provisions contained in an act of the General Assembly of said State, passed in the year eighteen hundred and thirty-eight, being chapter one hundred and

* See No. 44.

seven, section eight, and in accordance with the desire expressed by said General Assembly, in their certain memorial to Congress, passed December four, eighteen hundred and forty-five: *Provided nevertheless*, That the release herein provided for to the said State of Tennessee of said lands shall be in full satisfaction for any and all services rendered and expenses incurred by said State, or the authorities thereof, in the management, disposal, or administration of said public lands, and as agent or agents of the United States, in virtue of the provisions of the act entitled "An act to amend an act entitled 'An act to authorize the State of Tennessee to issue grants and perfect titles to certain lands therein described, and to settle the claims to the vacant and unappropriated lands within the same,' passed the eighteenth February, eighteen hundred and forty-one:" *And provided also*, That all the said lands the release of which is herein provided for, and the proceeds thereof, shall be and remain subject to all the same claims, incumbrances, and liabilities in relation to "North Carolina land warrants," or other claims of North Carolina, as the same would or could be subject to as regards the United States, if the same were not so as aforesaid released.

Approved, August 7, 1846.

No. 116.—An Act to attach to the Fort Wayne land district certain tracts of land lying within the limits of that district which are not now attached to any district.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all the lands in the State of Indiana which lie north of the township line dividing townships twenty-three and twenty-four, and east of the range line dividing ranges four and five east, which lie south of the Wabash river, be, and the same are hereby, attached to the Fort Wayne land district; and all that tract of land which lies north of the township line dividing townships twenty-three and twenty-four, and west of the range line dividing ranges four and five east, and east of the east line of the Crawfordsville land district, be attached to and shall form a part of the Winnemac land district; and all the lands lying south of the said township line, dividing the said townships twenty-three and twenty-four, which were heretofore within the limits of the Fort Wayne land district, including the portions of the late Miami cessions south of said line, be, and the same are, attached to the Indianapolis land district; and all lands lying within any of the aforesaid land districts which may not have been offered for sale, shall hereafter constitute a part of the land district in which they respectively lie.

Approved, August 8, 1846.

No. 117.—An Act granting certain lands to the Territory of Iowa, to aid in the improvement of the navigation of the Des Moines river, in said Territory.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be, and hereby is, granted to the Territory of Iowa, for the purpose of aiding said Territory to improve the navigation of the Des Moines river from its mouth to the

Raccoon Fork, (so called) in said Territory, one equal moiety, in alternate sections, of the public lands, (remaining unsold, and not otherwise disposed of, encumbered or appropriated,) in a strip five miles in width on each side of said river; to be selected within said Territory by an agent or agents to be appointed by the governor thereof, subject to the approval of the Secretary of the Treasury of the United States.

SEC. 2. *And be it further enacted*, That the lands hereby granted shall not be conveyed or disposed of by said Territory, nor by any State to be formed out of the same, except as said improvements shall progress; that is, the said Territory or State may sell so much of said lands as shall produce the sum of thirty thousand dollars, and then the sales shall cease, until the governor of said Territory or State shall certify the fact to the President of the United States, that one-half of said sum has been expended upon said improvement, when the said Territory or State may sell and convey a quantity of the residue of said lands, sufficient to replace the amount expended, and thus the sales shall progress as the proceeds thereof shall be expended, and the fact of such expenditure shall be certified as aforesaid.

SEC. 3. *And be it further enacted*, That the said river Des Moines shall be and forever remain a public highway for the use of the Government of the United States, free from any toll or other charge whatever for any property of the United States, or persons in their service passing through or along the same: *Provided always*, That it shall not be competent for the said Territory or future State of Iowa to dispose of said lands, or any of them, at a price lower than, for the time being, shall be the minimum price of other public lands.

SEC. 4. *And be it further enacted*, That whenever the Territory of Iowa shall be admitted into the Union as a State, the lands hereby granted for the above purpose shall be and become the property of said State for the purpose contemplated in this act, and no other: *Provided*, The legislature of the State of Iowa, shall accept the said grant for the said purpose.

Approved, August 8, 1846.

No. 118.—An Act to equalize the compensation of the Surveyors General of the public lands of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, from and after the thirtieth day of June, eighteen hundred and forty-six, the surveyor general of Wisconsin and Iowa and the surveyor general of Arkansas shall each receive the same annual salary as the other surveyors general of the public lands of the United States; and each of said surveyors general shall be allowed the same amount for clerk hire in their respective offices as is now allowed by law for the office of the surveyor general northwest of the Ohio.

SEC. 2. *And be it further enacted*, That the surveyors general of the public lands of the United States, in addition to the oath now authorized by law to be administered to deputies on their appointment to office, shall require each of their deputies on the return of his surveys, to take and subscribe an oath or affirmation that those surveys have been faithfully and correctly executed, according to law and the instructions of the surveyor general; and, on satisfactory evidence being presented to any court of competent jurisdiction, that such surveys, or any part thereof, had not been thus

executed, the deputy making such false oath or affirmation shall be deemed guilty of perjury, and shall suffer all the pains and penalties attached to that offence; and the district attorney of the United States for the time being, in whose district any such false, erroneous, or fraudulent surveys shall have been executed, shall, upon the application of the proper surveyor general, immediately institute suit upon the bond of such deputy; and the institution of such suit shall act as a lien upon any property owned or held by such deputy, or his sureties, at the time such suit was instituted.

Approved, August 8, 1846.

No. 119.—An Act to establish an additional land district in Iowa.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the sale of the public lands in the Territory of Iowa, an additional land district is hereby created, comprising all the lands lying between the line dividing townships seventy-five and seventy-six north, and the line dividing townships eighty-three and eighty-four north, which shall be called the Iowa district.

SEC. 2. *And be it further enacted,* That the President be, and he is hereby, authorized to appoint, by and with the advice and consent of the Senate, a register and a receiver of the public moneys for the said district, who shall respectively be required to reside at the site of said office, and who shall have the same powers, perform the same duties, and be entitled to the same compensation as are or may be prescribed by law in relation to other land offices of the United States.

SEC. 3. *And be it further enacted,* That the President is authorized to cause the public lands in the said district, with the exemption of sections numbering sixteen in each township, reserved for the use of schools, or such other lands as may be selected by law in lieu thereof, and of such other tracts as he may select for military or other purposes, to be exposed to sale in the same manner and upon the same terms and conditions as the other public lands of the United States.

SEC. 4. *And be it further enacted,* That the President is hereby authorized to designate the site at which the said office shall be established, and to remove the same to any other place within said district, whenever, in his opinion, it may be deemed expedient.

Approved, August 8, 1846.

No. 120.—An Act to grant a certain quantity of land to aid in the improvement of the Fox and Wisconsin rivers, and to connect the same by a canal, in the Territory of Wisconsin.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be, and hereby is, granted to the State of Wisconsin, on the admission of such State into the Union, for the purpose of improving the navigation of the Fox and Wisconsin rivers, in the Territory of Wisconsin, and of constructing the canal

* See Nos. 165, 248, 339.

to unite the said rivers at or near the portage, a quantity of land, equal to one-half of three sections in width, on each side of the said Fox river, and the lakes through which it passes, from its mouth to the point where the portage canal shall enter the same, and on each side of the said canal from one stream to the other, reserving the alternate sections to the United States, to be selected under the direction of the governor of said State, and such selection to be approved by the President of the United States. The said rivers, when improved, and the said canal, when finished, shall be and forever remain a public highway for the use of the Government of the United States, free from any toll or other charge whatever for the transportation of the mails, or for any property of the United States, or persons in their service passing upon or along the same: *Provided*, The said alternate sections, reserved to the United States, shall not be sold at a less rate than two dollars and fifty cents the acre: *Provided also*, That no pre-emptive claim to the lands so reserved shall give the occupant, or any other person claiming through or under him, a right to said lands at any price less than the price fixed in this act, at the time of the settlement on said lands.

SEC. 2. *And be it further enacted*, That as soon as the Territory of Wisconsin shall be admitted as a State into the Union, all the lands granted by this act shall be and become the property of said State for the purpose contemplated in this act, and no other: *Provided*, That the legislature of said State shall agree to accept said grant upon the terms specified in this act; and shall have power to fix the price at which said lands shall be sold, not less than one dollar and twenty-five cents the acre; and to adopt such kind and plan of improvement on said route as the said legislature shall from time to time determine for the best interest of said State. *Provided also*, That the lands hereby granted shall not be conveyed or disposed of by said State, except as said improvements shall progress: that is, the said State may sell so much of said lands as shall produce the sum of twenty thousand dollars, and then the sales shall cease until the governor of said State shall certify the fact to the President of the United States that one-half of said sum has been expended upon said improvements, when the said State may sell and dispose of a quantity of said lands sufficient to reimburse the amount expended; and thus the sales shall progress as the proceeds thereof shall be expended, and the fact of such expenditure certified in the manner herein mentioned.

SEC. 3. *And be it further enacted*, That the said improvement shall be commenced within three years after the said State shall be admitted into the Union, and completed within twenty years, or the United States shall be entitled to receive the amount for which any of said lands may have been sold by said State: *Provided*, That the title of purchasers under the sales made by the State, in pursuance of this act, shall be valid.

Approved, August 8, 1846.

No. 121.—Joint Resolution concerning the Oregon Territory.

Whereas by the convention concluded the twentieth day of October, eighteen hundred and eighteen, between the United States of America and the King of the United Kingdom of Great Britain and Ireland, for the period of ten years, and afterwards indefinitely extended and continued in force by another convention of the same parties concluded the

sixth day of August, in the year of our Lord one thousand eight hundred and twenty-seven, it was agreed that any country that may be by either party claimed on the northwest coast of America, westward of the Stony or Rocky mountains, now commonly called the Oregon territory, should, together with its harbors, bays and creeks, and the navigation of all rivers within the same, be, "free and open" to the vessels, citizens, and subjects of the two powers; but without prejudice to any claim which either of the parties might have to any part of said country; and with this further provision in the second article of the said convention of the sixth of August, eighteen hundred and twenty-seven, that either party might abrogate and annul said convention on giving due notice of twelve months to the other contracting party.

And whereas it has now become desirable that the respective claims of the United States and Great Britain should be definitely settled, and that said territory may no longer than need be, remain subject to the evil consequences of the divided allegiance of its American and British population, and of the confusion and conflict of national jurisdictions, dangerous to the cherished peace and good understanding of the two countries: With a view, therefore, that steps be taken for the abrogation of the said convention of the sixth of August, eighteen hundred and twenty-seven, in the mode prescribed in its second article, and that the attention of the governments of both countries may be the more earnestly directed to the adoption of all proper measures for a speedy and amicable adjustment of the differences and disputes in regard to the said territory:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States be, and he is hereby, authorized, at his discretion, to give to the government of Great Britain the notice required by the second article of the said convention of the sixth of August, eighteen hundred and twenty-seven, for the abrogation of the same.

Approved, April 27, 1846.

No. 122.—A Resolution in relation to the issuing of grants of certain lands in Louisiana.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Attorney General of the United States be, and he is hereby, directed to examine the evidences of title in the case of a certain Spanish land claim in the State of Louisiana, lying on the Mississippi, above New Orleans, commonly known as the Houma claim, and to report his opinion thereon to the President of the United States; and if, in the opinion of the Attorney General, any patent or patents issued, or which may be issued, under such claim, shall have been, or shall be, issued contrary to law, that the President of the United States be, and he is hereby, requested to cause proceedings to be instituted in behalf of the United States, and to have the validity of such patent or patents judicially determined.

Approved, June 26, 1846.

No. 123.—A Resolution authorizing the sale of certain lands at Baton Rouge to the State of Louisiana.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of War be, and he is hereby, authorized and empowered to sell and convey (for the use and benefit of the State of Louisiana) to the three commissioners appointed by the legislature of said State, to select a site on which to erect a State house, two or more acres of the tract of land owned by the United States, lying in the parish of East Baton Rouge, State of Louisiana, above and adjoining the town of Baton Rouge: *Provided,* That in the judgment of the President of the United States said sale may be made without detriment to the public interest.

Approved, July 23, 1846.

No. 124.—An Act for the admission of the State of Iowa into the Union.*

Whereas the people of the Territory of Iowa did, on the eighteenth day of May, anno Domini eighteen hundred and forty-six, by a convention of delegates called and assembled for that purpose, form for themselves a constitution and State government—which constitution is republican in its character and features—and said convention has asked admission of the said Territory into the Union as a State, on an equal footing with the original States, in obedience to “An act for the admission of the States of Iowa and Florida into the Union,” approved March third, eighteen hundred and forty-five, and “An act to define the boundaries of the State of Iowa, and to repeal as much of the act of the third of March, one thousand eight hundred and forty-five, as relates to the boundaries of Iowa,” which said last act was approved August fourth, anno Domini eighteen hundred and forty-six: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the State of Iowa shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original States in all respects whatsoever.

SEC. 2. *And be it further enacted,* That all the provisions of “An act supplemental to the act for the admission of the States of Iowa and Florida into the Union,” approved March third, eighteen hundred and forty-five, be, and the same are hereby, declared to continue and remain in full force as applicable to the State of Iowa, as hereby admitted and received into the Union.

Approved, December 28, 1846.

* See Nos. 101, 102, 103, 111, 162.

No. 125.—An Act declaring the assent of Congress to certain States to impose a tax upon all lands hereafter sold by the United States therein, from and after the day of such sale.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the assent of Congress is hereby given to the several States admitted into the Union prior to the twenty-fourth day of April, in the year of our Lord one thousand eight hundred and twenty, to impose a tax or taxes upon all lands hereafter sold by the United States, in said States, from and after the day of such sale: *Provided,* That the assent hereby given shall in no wise impair that provision of the compact with the said States which declares that all lands belonging to citizens of the United States residing without the said States shall never be taxed higher than lands belonging to persons residing therein.

Approved, January 26, 1847.

No. 126.—An Act to raise, for a limited time, an additional military force, and for other purposes.*

* * * * *

SEC. 9. *And be it further enacted,* That each non-commissioned officer, musician, or private, enlisted or to be enlisted in the regular army, or regularly mustered in any volunteer company, for a period of not less than twelve months, who has served or may serve during the present war with Mexico, and who shall receive an honorable discharge, or who shall have been killed or died of wounds received, or sickness incurred in the course of such service, or who shall have been discharged before the expiration of his term of service in consequence of wounds received or sickness incurred in the course of such service, (shall be entitled to receive a certificate or warrant from the War Department for the quantity of one hundred and sixty acres, and which may be located by the warrantee, or his heirs at law, at any land office of the United States, in one body, and in conformity to the legal subdivisions of the public lands, upon any of the public lands in such district then subject to private entry;) and upon the return of such certificate or warrant, with evidence of the location thereof having been legally made, to the General Land Office, a patent shall be issued therefor. That in the event of the death of any such non-commissioned officer, musician, or private during service, or after his discharge, and before the issuing of a certificate or warrant as aforesaid, the said certificate or warrant shall be issued in favor, and enure to the benefit, of his family or relatives, according to the following rules: first, to the widow and to his children; second, his father; third, his mother. And in the event of his children being minors, then the legally constituted guardian of such minor children shall, in conjunction with such of the children, if any, as may be of full age, upon being duly authorized by the orphans' or other court having probate jurisdiction, have power to sell, and dispose of such certificate or warrant for the benefit of those interested. And all sales, mortgages, powers, or other instruments of writing, going to affect the title or claim to any such bounty right, made or executed prior to the issue of such warrant or certificate, shall be null and void to all intents and purposes

* See explanatory act of 27th May, 1848, No. 138.

whatsoever, nor shall such claim to bounty right be in anywise affected by or charged with, or subject to, the payment of any debt or claim incurred by the soldier prior to the issuing of such certificate or warrant: *Provided*, That no land warrant issued under the provisions of this act shall be laid upon any lands of the United States to which there shall be a pre-emption right, or upon which there shall be an actual settlement and cultivation: *Provided further*, That every such non-commissioned officer, musician, and private who may be entitled, under the provisions of this act, to receive a certificate or warrant for one hundred and sixty acres of land, shall be allowed the option to receive such certificate or warrant, or a treasury scrip for one hundred dollars, and such scrip, whenever it is preferred, shall be issued by the Secretary of the Treasury to such person or persons as would be authorized to receive such certificates or warrants for lands; said scrip to bear an interest of six per cent. per annum, payable semi-annually, redeemable at the pleasure of the government. And that each private, non-commissioned officer, and musician, who shall have been received into the service of the United States, since the commencement of the war with Mexico, for less than twelve months, and shall have served for such term or until honorably discharged, shall be entitled to receive a warrant for forty acres of land, which may be subject to private entry, or twenty-five dollars in scrip if preferred; and in the event of the death of such volunteer during his term of service, or after an honorable discharge, but before the passage of this act, then the warrant for such land, or scrip, shall issue to the wife, child, or children, if there be any, and if none, then to the father, and if there be no father, then to the mother of such deceased volunteer: *Provided*, That nothing contained in this section shall be construed to give bounty land to such volunteers as were accepted into service, and discharged without being marched to the seat of war.*

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Approved, February 11, 1847.

No. 127.—An Act to establish a land office in the northern part of Michigan, and to provide for the sale of mineral lands in the State of Michigan.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all that portion of the public lands in the State of Michigan lying north of the boundaries of the Saginaw and Grand river land districts in said State, commonly called the northern peninsula of the State of Michigan, with the islands in lakes Superior, Huron, and Michigan, and in Green Bay, the straits of Michilimackinac, and the river St. Mary's, within the jurisdiction of said State, be, and the same are hereby, included in a land district, to be called the Lake Superior land district, and for the sale of the lands in said district there shall be a land office established at such point therein as the President of the United States may select.

SEC. 2. *And be it further enacted*, That the Secretary of the Treasury shall cause a geological examination and survey of the lands embraced in said district to be made and reported to the Commissioner of the General Land Office. And the President is hereby authorized to cause such of said lands as may contain copper, lead, or other valuable ores, to be exposed to

* This proviso repealed, see sect. 4, No. 190.

sale, giving six months' notice of the times and places of sales in such newspapers of general circulation in the several States as he may deem expedient, with a brief description of the lands to be offered; showing the number and localities of the mines known, the probability of discovering others, the quality of the ores, the facilities of working the mines, and the means and expense of transporting their products to the principal markets in the United States. And all the lands embraced in said district, not reported as aforesaid, shall be sold in the same manner as other lands under the laws now in force for the sale of the public lands, excepting and reserving from such sales section sixteen in each township for the use of schools, and such reservations as the President shall deem necessary for public uses.

SEC. 3. *And be it further enacted*, That all those persons who are in possession, by actual occupancy, of any portion of the district described in the first section of this act, under authority of a lease from the Secretary of War, for the purpose of mining thereon, and who have fully complied with all the conditions and stipulations of said lease, may enter and purchase the same at any time during the continuance of such lease, to the extent of such lease, and no less, by paying to the United States therefor at the rate of two dollars and fifty cents per acre: *Provided*, That said entry and purchase shall be made to include the original survey of such lease, as near as may be conforming to the lines of the public surveys of sections and subdivisions thereof. And all those persons who are in possession, by actual occupancy, of any of said lands, for mining purposes, under authority of a written permit from the Secretary of War, and who have visible landmarks and muniments as boundaries thereon, and who have, in all other respects complied with the conditions and stipulations contained in such permit, may enter and purchase the same, to the extent of the tract selected by them and reported to the Secretary of War, as required by said permit, and no less, in the same manner as those who hold under leases, and at the same price: *Provided*, such entry and purchase be made before the day said lands shall be offered for sale by order of the President. And all those persons who shall be in possession, by actual occupancy, of a mine or mines actually discovered before the passage of this act, and who shall pay the same per centum of rents as those who hold under leases, as aforesaid, shall be permitted to enter and purchase one section of land, and not less, to include such mine or mines discovered and occupied as aforesaid, by them, by paying to the United States the same price, and at the same time, as required of those who hold under permits aforesaid, and all rents accruing from such lessees or occupants shall be paid and delivered to such officers of the Government as the Secretary of the Treasury shall direct: *Provided*, That prior to any such purchase being made under the provisions of this section, proof of possession and occupancy, as aforesaid, of the mine or mines claimed, shall be made to the register and receiver of the land district, together with the evidence of the payment of all rents due the United States, agreeably to such rules as may be prescribed by the Secretary of the Treasury for that purpose, which register and receiver shall each be entitled to receive one dollar for his services therein: *Provided*, That an appeal from the decision of the register and receiver to the Secretary of the Treasury may be had under such regulations as the said Secretary may prescribe. And if two or more persons are in possession of the same section, the first occupant shall be entitled to a preference, unless the same can be so divided by legal subdivisions as to give to each the discovery claimed by him.

SEC. 4. *And be it further enacted*, That the said mineral lands shall be

offered for sale in quarter sections, and no bid shall be received at a less rate than five dollars per acre; and if such lands shall not be sold at public sale at such price, they shall thereafter be entered at private sale at that price: *Provided*, That no legal division or subdivision of any of said lands upon which there may be an outstanding lease or leases from the Secretary of War unexpired or undetermined, and which is actually occupied for mining purposes, and the occupants of which have complied with all the requisites of such lease or leases, and continue to perform the same, shall be sold until after the determination of such lease or leases by efflux of time, voluntary surrender, or other legal extinguishment thereof, except in such cases as are provided for in the third section of this act, and the lessees respectively shall be entitled to the privileges secured by said section upon the voluntary surrender of the lease or leases held by them.

SEC. 5. *And be it further enacted*, That the management and control of the mineral lands shall be transferred from the War Department, and placed under the jurisdiction and control of the Treasury Department; and all books, maps, papers, instruments, and other property, procured to be used and employed in the management, survey, exploring, or conducting of said mineral lands by the War Department, shall be delivered over and made subject to the disposition of the Secretary of the Treasury.

SEC. 6. *And be it further enacted*, That the President, by and with the advice and consent of the Senate, so soon as a sufficient number of townships are surveyed, and returns thereof made to the General Land Office, to authorize the commencement of the sales in said district, shall appoint one register and one receiver, for the land office in said district, who shall reside at the place designated by the President for the land office, receive such compensation, give security, and discharge all duties pertaining to such office as are prescribed by law.

Approved, March 1, 1847.

No. 128.—An Act for the admission of the State of Wisconsin into the Union.

Whereas the people of the Territory of Wisconsin did, on the sixteenth day of December, eighteen hundred and forty-six, by a convention of delegates called and assembled for that purpose, form for themselves a constitution and State government, which said constitution is republican; and said convention having asked the admission of said Territory into the Union as a State, on an equal footing with the original States:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the State of Wisconsin be, and the same is hereby declared to be, one of the United States of America, and is hereby admitted into the Union on an equal footing with the original States, in all respects whatever.

SEC. 2. *And be it further enacted*, That the assent of Congress is hereby given to the change of boundary proposed in the first article of said constitution, to wit: leaving the boundary line prescribed in the act of Congress entitled, "An act to enable the people of Wisconsin Territory to form a constitution and State government, and for the admission of such State into the Union," at the first rapids in the river St. Louis, thence in a direct line southwardly to a point fifteen miles east of the most easterly point in lake St. Croix, thence due south to the main channel of the Mississippi

river or lake Pepin, thence down the said main channel, as prescribed in said act.

SEC. 3. *And be it further enacted*, That the assent of Congress is hereby given to the resolutions adopted by said convention and appended to said constitution, and the acts of Congress referred to in said resolutions are hereby amended so that the lands thereby granted and the proceeds thereof, and the five per centum of the net proceeds of the public lands, may be held and disposed of by said State, in the manner and for the purposes recommended by said convention: *Provided however*, That the liabilities incurred by the territorial government of Wisconsin, under the act entitled "An act to grant a quantity of land to the Territory of Wisconsin, for the purpose of aiding in opening a canal to connect the waters of Lake Michigan with those of Rock river," shall be paid and discharged by said State: *And provided further*, That the even numbered sections along the route of said proposed canal shall be brought into market, and sold at the same minimum price, and subject to the same rights of pre-emption to all the settlers thereon at the passage of this act, as other public lands of the United States.

SEC. 4. *And be it further enacted*, That it is made and declared to be a fundamental condition of the admission of said State of Wisconsin into the Union, that the constitution adopted at Madison, on the sixteenth day of December, in the year one thousand eight hundred and forty-six, shall be assented to by the qualified electors, in the manner and at the times prescribed in the ninth section of the twentieth article of said constitution. And as soon as such assent shall be given, the President of the United States shall announce the same by proclamation; and therefrom, and without any further proceedings on the part of Congress, the admission of said State of Wisconsin into the Union, on an equal footing in all respects whatever with the original States, shall be considered as complete.

Approved, March 3, 1847.

No. 129.—An Act to create an additional land district in the Territory of Wisconsin, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all that portion of the public lands lying within the Territory of Wisconsin, north and west of the following boundary, to wit: Commencing at the Mississippi river on the line between townships twenty-two and twenty-three north, running thence east along said line to the fourth principal meridian, thence north along said meridian line to the line dividing townships twenty-nine and thirty, thence east along said township line to the Wisconsin river, thence up the main channel of said river to the boundary line between the State of Michigan and the Territory of Wisconsin, shall form a land district to be called the Chippewa land district; and for the sale of the lands in said district a land office shall be established at such place therein as the President of the United States may select.

SEC. 2. *And be it further enacted*, That the Secretary of the Treasury shall cause a geological examination and survey of the lands embraced in said district to be made and reported to the Commissioner of the General Land Office. And the President is hereby authorized to cause such of said lands as may contain copper, lead, or other valuable ores, to be exposed to sale, giving six months' notice of the times and places of sales in such news-

papers of general circulation in the several States as he may deem expedient, with a brief description of the lands to be offered ; showing the number and localities of the mines known, the probability of discovering others, the quality of the ores, the facilities of working the mines, and the means and expense of transporting their products to the principal markets in the United States. And all the lands embraced in said district, not reported as aforesaid, shall be sold in the same manner as other lands under the laws now in force for the sale of the public lands, excepting and reserving from such sales section sixteen in each township for the use of schools, and such reservations as the President shall deem necessary for public uses.

SEC. 3. *And be it further enacted*, That every person or persons who shall be in possession, by actual occupancy, of a mine or mines, actually discovered previous to the passage of this act, and who shall pay the same rents as those who hold under leases from the Secretary of War, and which rents accruing from such occupants and lessees shall be paid and delivered to such officer of the Government as the Secretary of the Treasury shall direct, shall be entitled to purchase the lands on which the same is or are situated at any time prior to the day of sale fixed by the President, in legal sub-divisions, not exceeding in the aggregate one hundred and sixty acres, to include such mine or mines, paying to the United States therefor at the rate of five dollars per acre : *Provided*, That prior to any entry being made under the provisions of this section, proof of possession and occupancy as aforesaid of the mine or mines claimed shall be made to the register and receiver of the land district, together with the evidence of the payment of all rents due the United States, agreeably to such rules as may be prescribed by the Secretary of the Treasury for that purpose, which register and receiver shall each be entitled to receive one dollar for his services therein : *Provided*, That an appeal from the decision of the register and receiver to the Secretary of the Treasury may be had, under such regulations as the said Secretary may prescribe. And if two or more persons are in possession of the same quarter section, the first occupant shall be entitled to a preference, unless the same can be so divided by legal sub-divisions as to give to each the discovery claimed by him.

SEC. 4. *And be it further enacted*, That the said mineral lands shall be offered for sale in subdivisions of quarter-quarter sections, and no bid shall be received at a less rate than five dollars per acre ; and if such lands shall not be sold at public sale, they shall be subject to entry at private sale at that price : *Provided*, That no legal division or subdivision of any of said lands upon which there may be an outstanding lease or leases from the Secretary of War unexpired or undetermined, and which is actually occupied for mining purposes, and the occupants of which have complied with all the requisites of such lease or leases, and continued to perform the same, shall be sold until after the determination of such lease or leases by efflux of time, voluntary surrender, or other legal extinguishment thereof, except in such cases as are provided for in the third section of this act, and the lessees respectively, shall be entitled to the privilege secured by said section upon the voluntary surrender of the lease or leases held by them.

SEC. 5. *And be it further enacted*, That the management and control of the mineral lands shall be transferred from the War Department, and placed under the jurisdiction and control of the Treasury Department, and all books, maps, papers, instruments, and other property procured to be used and employed in the management, survey, exploring or conducting of said mineral lands by the War Department, shall be delivered over and made subject to the disposition of the Secretary of the Treasury.

SEC. 6. *And be it further enacted*, That the President, by and with the advice and consent of the Senate, so soon as a sufficient number of townships are surveyed, and returns thereof made to the General Land Office, to authorize the commencement of the sales in said district, shall appoint one register and one receiver for the land office in said district, who shall reside at the place designated by the President for the land office, receive such compensation, give security, and discharge all duties pertaining to such office, as are prescribed by law.

Approved, March 3, 1847.

No. 130.—An Act to give the consent of Congress to the sale of certain salt spring lands heretofore granted to the States of Michigan, Illinois, and Arkansas.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the State of Michigan shall be, and hereby is, authorized and empowered to sell, in such manner as the legislature of said State shall by law direct, the salt spring lands granted to said State for its use, by an act entitled “An act supplementary to the act entitled an act to establish the northern boundary line of the State of Ohio, and to provide for the admission of the State of Michigan into the Union on certain conditions,” approved June twenty-third, eighteen hundred and thirty-six.

SEC. 2. *And be it further enacted*, That the State of Illinois shall be, and hereby is, authorized and empowered to sell, in such manner as the legislature of said State shall by law direct, the whole or any part of the saline lands lying in Jackson county, in said State, which were granted to the State of Illinois, by virtue of “An act to enable the people of the Illinois Territory to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States,” approved April eighteenth, eighteen hundred and eighteen.

SEC. 3. *And be it further enacted*, That the State of Arkansas shall be, and hereby is, authorized to sell, in such manner as the legislature of said State shall by law direct, the whole or any part of the saline lands granted to said State by virtue of an act supplementary to the act entitled “An act for the admission of the State of Arkansas into the Union, and to provide for the due execution of the laws of the United States within the same, and for other purposes,” approved June twenty-third, eighteen hundred and thirty-six.

Approved, March 3, 1847.

No. 131.—An Act to amend an act entitled “An act to amend ‘An act to carry into effect in the States of Alabama and Mississippi the existing compacts with those States with regard to the five per cent. fund and the school reservations.’”*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of “An act to amend an act entitled ‘An act to carry into effect in the States of Alabama and Mississippi the existing compacts with those States with

* See Nos. 161, 215.

regard to the five per cent. fund and the school reservations," approved February twenty-six, eighteen hundred and forty-five, be, and the same are hereby, extended so as to enable the State of Alabama to locate a quantity of land in any of the States or Territories equal to the quantity now due to the inhabitants of the township within the Chickasaw cession within said State: *Provided*, That they shall be made subject to the restrictions and limitations of the act the title of which has been cited, as far as the same may be applicable.

Approved, March 3, 1847.

No. 132.—Joint Resolution to prohibit the sale at private entry of certain lands in Cincinnati, Ohio.

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, directed to report to the next session of Congress all the facts in relation to the title to the unsold parts, if any there be, of the reserved fractional section number eleven, of fractional township number four, of fractional range number one, in J. C. Symme's Purchase, State of Ohio, together with the opinion of the Attorney General thereon, and that he suspend all further proceedings in relation thereto, until the end of the next session of Congress.

Approved, March 3, 1847.

No. 133.—An Act to amend an act entitled "An act to reorganize the General Land Office," approved July fourth, one thousand eight hundred and thirty-six.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That if at any time the number of patents for lands sold or granted under the authority of the United States, shall be such that they cannot be signed in reasonable time by the secretary appointed for that purpose under the sixth section of the above-recited act, that, in that case the President shall be, and he is hereby, authorized to appoint an assistant secretary, to sign the *name*; but the said assistant shall be employed by the express direction of the President, and only for such time as may be necessary to bring up the arrears of patents which may be ready for signature.

Approved, January 26, 1848.

No. 134.—An Act to confirm the boundary line between Missouri and Arkansas.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the dividing line between the States of Missouri and Arkansas, surveyed by commissioners appointed

* See No. 32.

under authority of laws enacted by those States, and ratified as a common boundary by the act of the legislature of Arkansas, approved twenty-third December, eighteen hundred and forty-six, and of the legislature of Missouri, approved February sixteenth, eighteen hundred and forty-seven, shall be, and the same is hereby, approved and confirmed as the boundary between those States, and between the surveying and land districts bordering thereon; and the Secretary of the Treasury is hereby authorized to have the surveys of the public lands of the United States closed on the line so surveyed as above mentioned: *Provided*, the expense thereof shall not exceed six dollars per mile for every mile and part of a mile actually surveyed, or necessarily re-surveyed, in closing those surveys.

Approved, February 15, 1848.

No. 135.—An Act authorizing persons to whom reservations of land have been made under certain Indian treaties, to alienate the same in fee.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all the reservations to or for any person or persons named in the treaty of the twentieth day of October, eighteen hundred and thirty-two, made at Camp Tippecanoe, in the State of Indiana, between the United States by their commissioners, Jennings, Davis, and Crume, and the chiefs and headmen of the Pottawatomie tribe of Indians of the Prairie and Kankakee, shall be so construed and held to convey to and vest in said reservees, their heirs and assigns, forever, an estate in fee simple in and to the reservations so made, by said treaty, to or for said reservees respectively.

SEC. 2. *And be it further enacted*, That said reservees, or their heirs, may sell and convey all or any part of his, her, or their respective reserves; and such sale and conveyance shall vest in the purchaser, his or her heirs and assigns, such title as is described in such deed of conveyance, to such lands so sold and conveyed: *Provided*, That all deeds of conveyance made before the passage of this act shall stand upon the same footing as those made after the passage of this act, and the rights of the parties shall be the same in one case as in the other: *Provided*, That such deed of conveyance for any of said lands made before or after the passage of this act, shall not be valid for such purpose until the same shall have been approved by the President of the United States.

Approved, March 9, 1848.

No. 136.—An Act in addition to an act therein mentioned.

Whereas, by a certain act approved March second, eighteen hundred and twenty-seven, there was granted to the State of Indiana, to aid in constructing the Wabash and Erie canal, a quantity of land equal to one-half of five sections wide on each side of said canal; and whereas, by an act approved February twenty-seventh, eighteen hundred and forty-one, there was confirmed to said State the lands selected under said grant for that part of said canal between the mouth of Tippecanoe river and Terre Haute,

and license was given to said State to select other lands subject to private entry, or such part of said selection as was holden against the State by the legal incumbrance or title of others; which last selections have never been made and completed :* Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the State of Indiana be, and is hereby, authorized to select out of any of the public land in said State subject to private entry, a quantity of land which, together with the land already received and holden by said State for the construction of the said Wabash and Erie canal, will make the full amount equal to one-half of five sections in width on each side of said canal : *Provided nevertheless,* That no selection shall be made of any land but such as was subject to private entry, on the first day of April, anno Domini one thousand eight hundred and forty-eight.

Approved, May 9, 1848.

No. 137.—An Act to require the holders of military land warrants to compensate the land officers of the United States for services in relation to the location of those warrants.†

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the services which may be rendered after the passage of this act by the registers and receivers of the several land offices of the United States in carrying out the provisions of the ninth section of the act of eleventh February, one thousand eight hundred and forty-seven, entitled “An act to raise, for a limited time, an additional military force, and for other purposes,” they shall each be entitled to require from the holders of warrants issued under that act, for one hundred and sixty acres, the sum of fifty cents for each; and from the holders of warrants, issued under the same law, for forty acres, the sum of twenty-five cents for each, as full compensation for those services : *Provided,* That in all cases where the warrant is located by, and for the use of, the volunteer or soldier to whom such warrant may have issued, for services rendered under the act aforesaid, no compensation shall be charged, either by the register or receiver, for making such location.

Approved, May 17, 1848.

No. 138.—An Act explanatory of the act entitled “An act to raise, for a limited time, an additional military force, and for other purposes,” approved eleventh February, eighteen hundred and forty-seven.‡

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the term “relatives,” as used in the ninth section of the act entitled “An act to raise, for a limited time, an additional military force, and for other purposes,” approved eleventh February, eighteen hundred and forty-seven, shall be considered as extending to the brothers and sisters of those persons whose services,

* See Nos. 45 and 247.

† See No. 190.

‡ See No. 126.

under that act, may have entitled them to the land therein provided: the order or priority of right, however, shall remain as declared in that act; and those failing, the right shall accrue, fourthly, to the brother or sister, or in equal proportions to the brothers and sisters of the deceased, as the case may be.*

SEC. 2. *And be it further enacted*, That the benefits of the said act of eleventh February, eighteen hundred and forty-seven, shall not be construed as forfeited by the privates and non-commissioned officers who have been, or may be, promoted to the grade of commissioned officer during their service in Mexico, and who shall have subsequently fulfilled the condition of their engagements: *Provided*, Such promotion shall have been made subsequent to the original organization of the company, corps, or regiment to which such privates and non-commissioned officers may have belonged.

Approved, May 27, 1848.

No. 139.—An Act for the admission of the State of Wisconsin into the Union.

Whereas the people of the Territory of Wisconsin did, on the first day of February, eighteen hundred and forty-eight, by a convention of delegates called and assembled for that purpose, form for themselves a constitution and State government, which said constitution is republican, and said convention having asked the admission of said Territory into the Union as a State, on an equal footing with the original States:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the State of Wisconsin be, and is hereby, admitted to be one of the United States of America, and is hereby admitted into the Union on an equal footing with the original States, in all respects whatever, with the boundaries prescribed by the act of Congress, approved August sixth, eighteen hundred and forty-six, entitled "An act to enable the people of Wisconsin Territory to form a constitution and State government, and for the admission of such State into the Union."

SEC. 2. *And be it further enacted*, That the assent of Congress is hereby given to the first, second, fourth, and fifth resolutions adopted by said convention, and appended to said constitution: and the acts of Congress referred to in the said resolutions are hereby amended, so that the lands granted by the provisions of the several acts referred to in the said first and fourth resolutions, and the proceeds of said lands, and the five per centum of the net proceeds of the public lands therein mentioned, shall be held and disposed of by said State, in the manner and for the purposes recommended by said convention; and so that, also, the lands reserved to the United States by the provisions of the act entitled "An act to grant a quantity of land to aid in the improvement of the Fox and Wisconsin rivers, and to connect the same by a canal in the Territory of Wisconsin;" and, also, the even numbered sections reserved by the provisions of the act entitled "An act to grant a quantity of land to the Territory of Wisconsin, for the purpose of aiding in opening a canal to connect the waters of lake Michigan with those of Rock river," shall be offered for sale at the same minimum price, and subject to the same rights of pre-emption, as

* See No. 282, and other numbers there given.

other public lands of the United States : *Provided however*, That no person shall be entitled to a pre-emption by reason of the settlement and cultivation of any quarter section or other sub-division of said even numbered sections, which tract, before the commencement of such settlement, shall have been claimed by any other person cultivating and improving the same in good faith, and which shall have continued to be claimed, cultivated, and improved in like good faith by such person, his representatives or assigns, until the sale of said tract, and of which said prior claim, cultivation, and improvement, the person so claiming pre-emption shall have had notice at the time of his entry and settlement ; neither shall any pre-emption be allowed to any tract, to the injury of any person, or of the representatives or assigns of any person, claiming and occupying the same or any part thereof in good faith, in his or her right, at the passage of this act, and owning valuable cultivation or improvements thereon, which cultivation or improvements shall have been assigned by the person so claiming pre-emption, or, if commenced subsequently to the entry and settlement of such person, shall have been made with his consent or acquiescence. *And provided further*, That the liabilities incurred by the territorial government of Wisconsin, under the act entitled "An Act to grant a quantity of land to the Territory of Wisconsin, for the purpose of aiding in opening a canal to connect the waters of Lake Michigan with those of Rock River," hereinbefore referred to, shall be paid and discharged by the State of Wisconsin.

SEC. 3. *And be it further enacted*, That the purchasers of any tract of the said even numbered sections mentioned in the preceding section, and sold since the reservation thereof at the minimum price of two dollars and fifty cents per acre, shall be entitled to receive from the Commissioner of the General Land Office a certificate of the quantity of land so purchased, and of the amount of the excess paid therefor over and above the value of said land, at the rate of one dollar and twenty-five cents per acre ; which certificate, to the amount of such excess, shall be receivable from the holder thereof, or his assigns, in like manner as so much money, in payment of the public lands of the United States. That, in the event of the death of any such purchaser before the issuing of such certificate, the same shall be issued in favor of the lawful representatives of such purchaser.

* * * * *

Approved, May 29, 1848.

No. 140.—An Act in explanation of an act entitled "An act to appropriate the proceeds of the public lands, and to grant pre-emption rights."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the fifth section of the act entitled "An act to appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights," approved on the fourth day of September, one thousand eight hundred and forty one, shall be so construed as to suspend only such portions of said act as precede said fifth section, (relative to the distribution of the proceeds of the sales of the public lands,) that being hereby declared to be the true intent and meaning of said fifth section of the act aforesaid.*

Approved, June 13, 1848.

* See No. 48.

No. 141.—An Act to amend the act entitled “An act to appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights,” &c., approved September fourth, eighteen hundred and forty-one.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the sixteenth section of said act be so amended as to give the consent of Congress, and the same is hereby given, to the application of the two per cent. fund heretofore relinquished by said act to the State of Mississippi, to be faithfully applied to the construction of a railroad leading from Brandon, in the State of Mississippi, to the eastern boundary of said State, in such manner as to authorize the construction of a railroad, commencing at Jackson, in said State, and extending to the eastern boundary of said State of Mississippi, via Brandon, in the direction, as near as may be, of the towns of Selma, Cahawba, and Montgomery, in the State of Alabama.

Approved, June 16, 1848.

No. 142.—An Act to attach a portion of the northwestern land district of Louisiana to the district north of Red river, Louisiana.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, from and after the first day of October, anno Domini eighteen hundred and forty-eight, townships fourteen north to twenty-three north, inclusive, in ranges four and five west, shall be detached from the northwestern land district, Louisiana; and the same shall, from and after the date aforesaid, be attached to, and form a part of, the district north of Red river, Louisiana; and it shall be, and is hereby, made the duty of the Commissioner of the General Land Office to cause the land office in the district north of Red river to be furnished with the plats and other papers, or transcripts thereof, relating to the townships aforesaid, and to have this act carried into full effect.

Approved, June 16, 1848.

No. 143.—An Act giving further time for satisfying claims for bounty lands, and for other purposes.†

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act of the second session of the twenty-ninth [twenty-seventh] Congress, chapter sixty-nine, entitled “An act to provide for satisfying claims for bounty lands for military services in the late war with Great Britain, and for other purposes,” approved July twenty-seven, eighteen hundred and forty-two, and also the two acts approved January twenty-seventh, eighteen hundred and thirty-five, therein and thereby revived, shall be, and the same are hereby revived, and continued in force for five years, to be computed from and after the passage of this act.

Approved, June 26, 1848.

* See No. 48.

† See Nos. 55, 230.

No. 144.—An Act respecting certain surveys in the State of Florida.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Commissioner of the General Land Office is hereby authorized and directed to cause to be surveyed, as soon as practicable, the islands and keys, and other lands in South Florida, interspersed with water, which cannot conveniently be connected with the regular public surveys; and also the private claims or grants which have been duly confirmed situate in said State; and that such surveys of said islands, keys, and lands interspersed with water as aforesaid may be made by such persons on such terms, and in such mode and manner, as said Commissioner may deem most expedient and proper, without connexion thereof with the other public surveys, by township lines; but the expense thereof shall not exceed the maximum price per mile heretofore allowed for surveys by the United States in other States or Territories; and the surveys of said private claims or grants may be made by such persons, and on such terms, as said Commissioner may deem most expedient and proper; but the expense thereof shall not in any case exceed twenty-five per centum on the said price heretofore allowed in addition to such price: *Provided however,* that it shall be the duty of the President at some convenient time, and before offering any of said islands for sale, to have an examination made by, and a report from, a board of engineers, to ascertain whether any of said islands or parts of them, and if so, which of them, should be reserved from sale for the use of the United States; and that all islands or parts of islands recommended by such board to be reserved for public use shall be reserved from sale.

Approved, June 28, 1848.

No. 145.—An Act for the relief of the bona fide settlers under the acts for the armed occupation and settlement of a part of the Territory of Florida.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in all cases in which proof shall be made to the satisfaction of the Commissioner of the General Land Office that any person who obtained a permit under the act entitled "An act to provide for the armed occupation and settlement of the unsettled part of the peninsula of Florida," approved August fourth, eighteen hundred and forty-two,* and who was an occupant under that act, and the act amendatory thereof, approved June fifteenth, eighteen hundred and forty-four, and who actually occupied or settled under said acts, and did not voluntarily relinquish and abandon the same, but continued to reside on said frontier south of said line specified in said act of eighteen hundred and forty-two, thereby aiding to effect the object of said acts, and who has not received the lands provided by said acts, such settler shall be entitled to a grant and patent for the land so occupied or settled by him, the same as if all the conditions and stipulations of said acts and requirements of the General Land Office in relation thereto had been fully and strictly fulfilled and complied with.

SEC. 2. *Be it further enacted,* That in all cases where the lands settled

* See Nos. 56, 87.

or occupied by such settler, or any part thereof, were or are not legally subject to donation under the said acts on any account whatever, then such settler may locate his right, or the part so interfered with, on any vacant public lands in the same, or any adjacent township.

SEC. 3. *And be it further enacted*, That this act shall extend to, and be construed and executed for, the benefit of the widow and heirs of any settler, according to the principles of the fifth section of said first above-recited act.

SEC. 4. *And be it further enacted*, That immediately after the passage of this act, the Secretary of the Treasury shall appoint an agent to proceed forthwith to the different county seats of the counties of the State of Florida, where said lands lie, who shall attend at least ten successive days at each county seat, if so long time be necessary, to take and receive proof by depositions before him, or in such manner as he may prescribe in relation to such settlement or occupation, and of settlers being entitled under this act to a grant or donation of land as aforesaid; and said agent shall also attend at such other places in said settlements as the convenience of such settlers in furnishing their proofs may demand, under the instructions of the General Land Office; and said agent shall, within five months after he shall commence his duties in said State, transmit all the proofs he may take, and make report of his opinion as to each case to said Commissioner of the General Land Office, who shall proceed forthwith to examine and decide said cases: *Provided*, That if any settler does not submit his proof to such agent within four months after reasonable notice, by advertisement of the times and places of his attendance to receive such proof, said settler shall not have the benefit of this act; and all the cases reported as aforesaid shall be definitively decided by the Commissioner of the General Land Office within two months after the report thereof is received at his office; and said agent shall be allowed the same compensation as is allowed by law to examining agents of the Treasury Department.

Approved, July 1, 1848.

No. 146.—An Act further to extend the time for locating Virginia military land warrants, and returning surveys thereon to the General Land Office.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act entitled "An act further to extend the time for locating Virginia military land warrants, and returning surveys thereon to the General Land Office," approved August nineteen, eighteen hundred and forty-one, and as to all warrants issued prior to the tenth day of August, eighteen hundred and forty, and no others, be, and the same is hereby, revived and continued in force until the first day of January, eighteen hundred and fifty.*

SEC. 2. *And be it further enacted*, That the same right and privilege is hereby also extended for the same time to all such warrants as have issued subsequent to said tenth day of August, A. D. eighteen hundred and forty: *Provided*, That before the location thereof it shall be shown to the satisfaction of the Secretary of the Treasury that such warrant was issued justly and legally, and that the person who received said warrant was legally entitled to the same.

Approved, July 5, 1848.

* See Nos. 47, 172.

No. 147.—An Act to extend the provisions of existing pension laws to enlisted men of the ordnance corps of the United States army.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the acts of Congress granting pensions to soldiers disabled by wounds or otherwise while in the line of their duty in public service, shall be construed to apply to the enlisted men of the ordnance department who have been or may be disabled, in the same manner as to non-commissioned officers, artificers, musicians, and privates of other corps of the army, subject to the limitation that in no such case shall the pension exceed the rate of eight dollars per month.

SEC. 2. *And be it further enacted,* That those enlisted men of the ordnance department who have served or may serve in Mexico during the war with that country, shall be entitled to, and shall receive, the same bounty in land as is or may be allowed by law to other regular troops in the service of the United States, and under like limitations and restrictions.

Approved, July 10, 1848.

No. 148.—An Act to extend an act entitled “An act providing for the adjustment of all suspended pre-emption land claims in the several States and Territories,” approved third August, eighteen hundred and forty-six.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the power and jurisdiction given to the Commissioner of the General Land Office by the act of the third of August, eighteen hundred and forty-six, entitled “An act providing for the adjustment of all suspended pre-emption land claims in the several States and Territories,” shall continue and remain in force until the third day of August, one thousand eight hundred and forty-nine.

Approved, July 17, 1848.

No. 149.—An Act to amend an act approved the twenty-fourth of May, eighteen hundred and twenty-four, entitled “An act supplementary to an act approved on the third day of March, one thousand eight hundred and nineteen, entitled ‘An act providing for the correction of errors in making entries of land at the land offices.’”†

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of the act to which this act is amendatory as provides that the application for the correction of an error of entry shall be made within six months after the date of such erroneous entry, be, and the same is hereby, repealed.

Approved, July 17, 1848.

* See No. 110.

† See Nos. 11, 14, 17, 19, 110, 225.

No. 150.—An Act to revive an act authorizing certain soldiers in the late war [with Great Britain] to surrender the bounty lands drawn by them, and to locate others in lieu thereof.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall and may be lawful for any soldier in the late war with Great Britain, to whom bounty land has been allotted and patented in the State of Arkansas, which was and is unfit for cultivation, to surrender said patent, and to receive in lieu thereof the same quantity of any of the public land subject to private entry as he may select: *Provided,* That before receiving such new land, it shall be proved to the satisfaction of the Commissioner of the General Land Office, that the land so allotted and patented to said soldier is unfit for cultivation, and that said soldier has never disposed of his interest in said land by any sale of his own, and that the same has not been taken or disposed of for his debts due to any individual, and that he shall release all his interest in the same to the United States, in such way as said Commissioner shall prescribe; and such surrender and location shall be made within five years from the passing of this act.

Approved, July 25, 1848.

No. 151.—An Act supplemental to an act to confirm the survey and location of claims for lands in the State of Mississippi, east of the Pearl river and south of the thirty-first degree of north latitude, approved March three, eighteen hundred and forty-five.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all confirmed claims and settlement rights for lands situate in the State of Mississippi, east of the Pearl river and south of thirty-first degree of north latitude, which had not been actually surveyed on the ground, and for which no plats of actual survey had been returned to the surveyor general's office south of Tennessee, on or before the first day of January, one thousand eight hundred and thirty-nine, shall be, and are hereby confirmed, according to actual surveys hereafter to be made as herein provided for, in the same manner that said claims actually surveyed on the ground, and returned to the surveyor general's office at the time aforesaid, are confirmed by the act to which this is a supplement; and the surveyor general is hereby authorized and directed, on request of any party interested, to cause the survey of said claims, without delay, and at any time between the passage of this act and the first day of January, eighteen hundred and fifty, to be made and returned to his office, and he shall certify the return and plats of such actual surveys, so made to his office, to the register and receiver for lands in the Augusta district for said State. And the surveyor general, and the said register and receiver, shall regard these claims and plats of actual survey, in all respects, upon the same footing with the claims confirmed as actually surveyed upon the ground, by said act to which this is a supplement, and subject to, and entitled to, the benefits of all the provisions of said act: *Provided,* That if it shall appear to the surveyor general, from the plats of actual survey already returned to his office, that any of said claims cannot now be actually surveyed on the ground, owing to their conflict with other claims already confirmed as actually surveyed on the ground, by the act to

which this is a supplement, then it shall be lawful for him to grant to the claimant, so deprived of his location, a warrant, as provided by the fourth section of said act, without causing the survey to be made.

SEC. 2. *And be it further enacted*, That all warrants which have been heretofore issued, or which shall hereafter be issued, by the surveyor general south of Tennessee, under the provisions of the original act to which this is a supplement, and under the provisions of this act, be, and they are hereby, authorized to be located upon any lands subject to sale at private entry in the State of Mississippi, in any of the land districts in said State, in the same manner that said warrants are now authorized to be located in the Augusta land district.

Approved, August 5, 1848.

No. 152.—An Act for the relief of those pre-emption claimants upon the Miami lands in Indiana, who, by their services in the Mexican war, are entitled to bounty land.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That those persons who are entitled to bounty land warrants for one hundred and sixty acres in virtue of their own services during the present war with Mexico, and who may likewise be entitled to the right of pre-emption upon the Miami lands in Indiana, under the act of the third of August, eighteen hundred and forty-six, shall have the privilege of applying their warrants in payment or part payment for the tract to which they may establish their right of pre-emption; said warrant to be estimated, when received as aforesaid, at the sum of one dollar and twenty-five cents for each acre therein contained: *Provided*, That in no case shall the Government be required to refund any excess of the estimated amount of said warrants, over and above the price of the tract claimed to be entered; and should the tract claimed to be entered as aforesaid exceed, at the rate fixed by law, the said sum, then and in such case the balance of the purchase money of said tract shall be paid in cash.

Approved, August 7, 1848.

No. 153.—An Act to authorize the State of Alabama to apply certain lands heretofore granted to that State for internal improvements, for the use of schools in the valueless sixteenth sections in said State.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, the lands granted to the State of Alabama for purposes of internal improvement, by the eighth section of the act entitled "An act to appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights," approved September fourth, eighteen hundred and forty-one, may be, and the same are hereby, placed at the disposal of the legislature of said State, at such price as said legislature may direct, to be applied for the use of schools in such townships of said State as in which the sixteenth or school sections are com-

* See No. 48.

paratively valueless, and the legislature may locate said lands in any legal subdivisions, not less than forty acres, within the limits of said State.

Approved, August 11, 1848.

No. 154.—An Act to establish the Territorial government of Oregon.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the passage of this act, all that part of the Territory of the United States which lies west of the summit of the Rocky Mountains, north of the forty-second degree of north latitude, known as the Territory of Oregon, shall be organized into and constitute a temporary government by the name of the Territory of Oregon: *Provided,* that nothing in this act contained shall be construed to impair the rights of person or property now pertaining to the Indians in said Territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to affect the authority of the government of the United States to make any regulation respecting such Indians, their lands, property, or other rights, by treaty, law, or otherwise, which it would have been competent to the government to make if this act had never passed: *And provided also,* That the title to the land, not exceeding six hundred and forty acres, now occupied as missionary stations among the Indian tribes in said Territory, together with the improvements thereon, be confirmed and established in the several religious societies to which said missionary stations respectively belong: *And provided further,* That nothing in this act contained shall be construed to inhibit the government of the United States from dividing said Territory into two or more Territories, in such manner and at such times as Congress shall deem convenient and proper, or from attaching any portion of said Territory to any other State or Territory of the United States.

* * * * *

SEC. 6. *And be it further enacted,* That the legislative power of the Territory shall extend to all rightful subjects of legislation not inconsistent with the constitution and laws of the United States; but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents. All the laws passed by the legislative assembly shall be submitted to the Congress of the United States, and if disapproved shall be null and of no effect: *Provided,* That nothing in this act shall be construed to give power to incorporate a bank, or any institution with banking powers, or to borrow money in the name of the Territory, or to pledge the faith of the people of the same for any loan whatever, either directly or indirectly. No charter granting any privilege of making, issuing, or putting into circulation any notes or bills in the likeness of bank notes, or any bonds, scrip, drafts, bills of exchange or obligations, or granting any other banking powers or privileges, shall be passed by the legislative assembly; nor shall the establishment of any branch or agency of any such corporation, derived from other authority, be allowed in said Territory; nor shall said legislative assembly authorize the issue of any obligation, scrip, or evidence of debt by said Territory, in any mode or manner whatever,

except certificates for services to said Territory; and all such laws, or any law or laws inconsistent with the provisions of this act, shall be utterly null and void; and all taxes shall be equal and uniform, and no distinction shall be made in the assessments between different kinds of property, but the assessments shall be according to the value thereof. To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title.

* * * * *

SEC. 14. *And be it further enacted*, That, the inhabitants of said Territory shall be entitled to enjoy all and singular the rights, privileges, and advantages granted and secured to the people of the territory of the United States north-west of the river Ohio, by the articles of compact contained in the ordinance for the government of said territory, on the thirteenth day of July, seventeen hundred and eighty-seven; and shall be subject to all the conditions, and restrictions and prohibitions in said articles of compact imposed upon the people of said territory; and the existing laws now in force in the Territory of Oregon, under the authority of the provisional government established by the people thereof, shall continue to be valid and operative therein, so far as the same be not incompatible with the constitution of the United States, and the principles and provisions of this act; subject, nevertheless, to be altered, modified, or repealed, by the legislative assembly of the said Territory of Oregon; but all laws heretofore passed in said territory making grants of land, or otherwise affecting or incumbering the title to lands, shall be, and are hereby declared to be, null and void; and the laws of the United States are hereby extended over, and declared to be in force in, said territory, so far as the same, or any provision thereof, may be applicable.

* * * * *

SEC. 20. *And be it further enacted*, That when the lands in the said Territory shall be surveyed under the direction of the government of the United States, preparatory to bringing the same into market, sections numbered sixteen and thirty-six in each township in said Territory shall be, and the same is hereby, reserved for the purpose of being applied to schools in said Territory, and in the States and Territories hereafter to be erected out of the same.*

* * * * *

SEC. 26. *And be it further enacted*, That the revenue laws of the United States be, and are hereby, extended over the Territory of Oregon.

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Approved, August 14, 1848.

No. 155.—An Act in relation to military land warrants.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any non-commissioned officer, musician, or private, or his widow or heirs, who shall receive and hold in his own right a land warrant, issued by the government of the United States for military service, may locate the same in *on* legal subdivision, on any public land subject to private entry, taking said land at the price at

* Sect. 20 amended, see No. 212.

which the same is subject to private entry, and reckoning the warrant at one dollar and twenty-five cents per acre for the number of acres therein contained, and paying the balance, if any, in money; but no claim shall exist on the government to pay for any balance on said warrant in money.

Approved, August 14, 1848.

No. 156.—Joint Resolution relative to the evidence which shall be considered satisfactory in applications for bounty land.

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That in all cases of application for bounty land warrants under the act approved February eleventh, eighteen hundred and forty-seven, the honorable discharge of the applicant, showing the same was predicated on a surgeon's certificate of disability, shall be considered as satisfactory evidence to the Commissioner of Pensions that the disability was incurred in the course of service.

Approved, March 24, 1848.

No. 157.—An Act supplemental to the act approved the sixth day of July, eighteen hundred and forty-two, entitled "An act confirming certain land claims in Louisiana."*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a further term of two years, from and after the passage of this act, be, and the same is hereby, conceded to locate the claim named and alluded to in the third and sixth sections of the act to which this act is supplemental, and therein designated as claim number eight.

Approved, January 19, 1849.

No. 158.—An Act to relinquish the reversionary interest of the United States in a certain Indian reservation in the State of Alabama.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all the right, title, and interest, which might accrue or revert, or has accrued or reverted to the United States, to a certain reservation confirmed to the heirs of William Jones, deceased, by the certificate from the United States, bearing date the twelfth day of April, one thousand eight hundred and twenty, being known and described as fractional section sixteen, and the southeast and southwest quarters of section nine, in township six, and range five, under a treaty made and concluded at Fort Jackson, on the ninth day of August, one thousand eight hundred and fourteen, and lying in the State of Alabama, be, and the same are hereby, relinquished and vested in Stephen Steele and

* See No. 54.

James Daniel, respectively, according to the extent of their several interests therein : *Provided however*, (and this relinquishment is made upon the condition,) that the said Steele and Daniel, or either of them, have fairly, and in good faith, and for a valuable and adequate consideration, purchased of the said heirs, by authentic and valid deeds, their respective rights in and to the said reservations : *And provided further*, That no sale or conveyance of said reservation, or any part thereof, by the said reservees, or either of them, shall be deemed regular or valid, nor shall this act have effect, until the President of the United States, or some officer to be by him designated, shall have approved such conveyance, and endorsed his approval thereon.

Approved, February 19, 1849.

No. 159.—An Act for authenticating certain records.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it may and shall be lawful for the keepers or persons having the custody of laws, judgments, orders, decrees, journals, correspondence, or other public documents, of any foreign government or its agents, relating to the title to lands claimed by or under the United States, on the application of the head of any one of the departments, the Solicitor of the Treasury, or the Commissioner of the General Land office, to authenticate the same under his hand and seal, and certify the same to be correct and true copies of such laws, judgments, orders, decrees, journals, correspondence, or other public documents; and when the same shall be certified by such minister, consul, or judge, mentioned in the first section of this act, under his hand and seal of office, to be true copies of the originals, the same shall be sealed up by him and returned to the Solicitor of the Treasury, who shall file the same in his office, and cause it to be recorded in a book to be kept for that purpose. A copy of said laws, judgments, orders, decrees, journals, correspondence, or other public documents, so filed, or of the same so recorded in said book, may be read in evidence in all courts where the title to land, claimed by or under the United States, may come into question equally with the originals thereof.

SEC. 2. *And be it further enacted*, That the Solicitor of the Treasury shall cause a seal to be made and provided for his office, with such device as the President of the United States shall approve, and copies of any public documents, records, books, or papers, belonging to or on the files of the said office, under the signature of the said Solicitor, or, when the office shall be vacant, under the signature of such officer as may be officiating for the time being, accompanied by an impress of the said seal, shall be competent evidence in all cases equally with the original records, documents, books, or papers.

SEC. 3. *And be it further enacted*, That all books, papers, documents, and records in the War, Navy, Treasury, and Post Office Departments, and the Attorney General's office, may be copied and certified under seal in the same manner as those in the State Department may now by law be, and with the same force and effect, and the said Attorney General shall cause a seal to be made and provided for his office, with such device as the President of the United States shall approve.

Approved, February 22, 1849.

No. 160.—An Act to establish an additional land office in the State of Missouri.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of the public lands of the United States included in the present Fayette district, in the State of Missouri, as lies within the following boundaries, to wit: Beginning at the point on the northern boundary of the State intersected by the line between ranges thirteen and fourteen; thence south along that line until it intersects the line between townships fifty-five and fifty-six; thence west along that line until it intersects the line between ranges twenty-three and twenty-four; thence north along the last mentioned line to the northern boundary of the State; thence east with said boundary line to the beginning, shall be formed into a new land district, to be called the "Chariton district;" and for the sale of the public lands within the district hereby constituted a land office shall be established at such most convenient place within the said district as the President of the United States may designate.

SEC. 2. *And be it further enacted,* That for the office in the land district hereby created, a register and receiver shall be appointed by the President, by and with the advice and consent of the Senate, who shall severally give bond and security, according to law, before entering on the duties of their respective offices. They shall receive the same compensation, fees and emoluments, and shall perform similar duties, and possess the same powers with all other registers and receivers of land offices, and shall, in all respects, be governed by the laws of the United States providing for the sale of the public lands.

SEC. 3. *And be it further enacted,* That the Commissioner of the General Land Office shall cause to be transferred to the land office hereby created all such books, maps, records, field notes, and plats, or transcripts thereof, relating to the surveys and entries of the public lands in this district, as may be necessary for the sale of the public lands, in compliance with the provisions of this act.

Approved, February 26, 1849.

No. 161.—An Act to extend the provisions of an act approved the third of March, eighteen hundred and forty-seven, for carrying into effect the existing compacts with the States of Alabama and Mississippi, with regard to the five per cent. fund and school reservations.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of "An act to amend an act entitled 'An act to carry into effect, in the States of Alabama and Mississippi, the existing compacts with those States with regard to the five per cent. fund and the school reservations,' approved March third, eighteen hundred and forty-seven," be and the same are hereby extended, so as to enable the State of Alabama to have three years from the passage of this act in which to make the selections of land authorized by the preceding acts to which this is an amendment.

Approved, February 26, 1849.

* See Nos. 131, 215.

No. 162.—An Act declaratory of the act for the admission of the State of Iowa into the Union.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That by the act entitled "An act for the admission of the State of Iowa into the Union," approved December twenty-eighth, eighteen hundred and forty-six, the United States assented to the application for the support of common schools, as made in the second section of the tenth article of the constitution of said State, of the five per cent. of the net proceeds of the sales of the public lands within the State of Iowa, and of the five hundred thousand acres of land granted to said State by the act of the fourth of September, eighteen hundred and forty-one; said land to be selected in legal subdivisions of not less than three hundred and twenty acres.

Approved, March 2, 1849.

No. 163.—An Act to amend an act entitled "An act for authenticating certain records," approved February twenty-second, eighteen hundred and forty-nine.†

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first section of the act entitled "An act for authenticating certain records," approved February twenty-second, eighteen hundred and forty-nine, be, and the same is hereby, amended so as to read as follows: SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That it may and shall be lawful for the keepers or persons having the custody of laws, judgments, orders, decrees, journals, correspondence, or other public documents of any foreign government or its agents, relating to the title to lands claimed by or under the United States, on the application of one of the *head* of one of the departments, the Solicitor of the Treasury, or the Commissioner of the General Land Office, to authenticate the same under his hand and seal, and certify the same to be correct and true copies of such laws, judgments, orders, decrees, journals, correspondence, or other public documents; and when the same shall be certified by an American minister or consul under his hand and seal of office, or by a judge of one of the United States courts under his hand and seal, to be true copies of the originals, the same shall be sealed up by him and returned to the Solicitor of the Treasury, who shall file the same in his office, and cause it to be recorded in a book to be kept for that purpose. A copy of said laws, judgments, orders, decrees, journals, correspondence, or other public documents so filed, or of the same so recorded in said book, may be read in evidence in all courts, where the title to land claimed by or under the United States may come into question, equally with the originals thereof.

Approved, March 2, 1849.

* See No. 124.

† See No. 159.

No. 164.—An Act for changing the location of the land office in the Chippewa land district, and establishing an additional land district in the State of Wisconsin.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the thirtieth June next, the land office for the sale of the public lands in the Chippewa land district shall be removed from the falls of St. Croix, to Stillwater in the county of St. Croix, in the proposed Territory of Minnesota; and sales of the public lands in said district shall thereafter be held at Stillwater, in the county aforesaid.

SEC. 2. *And be it further enacted,* That for the sale of the public lands in the Territory of Wisconsin, an additional land office and land district are hereby created, comprising all the lands not included within the districts of land subject to sale at Green Bay, Milwaukee, or Mineral Point, which shall be called the western land district.

SEC. 3. *And be it further enacted,* That the President be, and he is hereby, authorized to appoint, by and with the advice and consent of the Senate, a register and a receiver of the public moneys for the said district, who shall respectively be required to reside at the site of said office, and who shall have the same powers, perform the same duties, and be entitled to the same compensation as are, or may be, prescribed by law in relation to other land officers of the United States.

SEC. 4. *And be it further enacted,* That the President is authorized to cause the public lands in the said district, with the exemption of sections numbered sixteen, in each township, reserved for the use of schools, or such other lands as may be selected by law in lieu thereof, and of such other tracts as he may select for military or other purposes, to be exposed to sale in the same manner, and upon the same terms and conditions as the other public lands of the United States.

SEC. 5. *And be it further enacted,* That the President is hereby authorized to designate the site at which the said office shall be established, and to remove the same to any other place within said district, whenever, in his opinion, it may be deemed expedient.

Approved, March 2, 1849.

No. 165.—An Act in relation to the Fox and Wisconsin river reservation, in the State of Wisconsin.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all land entries made in the Green Bay land district, in the State of Wisconsin, upon the odd-numbered sections of the Fox and Wisconsin river reservation in said State, subsequent to the passage of an act entitled "An act to grant a certain quantity of land to aid in the improvement of the Fox and Wisconsin rivers, and connect the same by canal, in the Territory of Wisconsin," approved on the eighth day of August, eighteen hundred and forty-six, be, and the same are hereby, declared to be good and valid as though said act had not been passed: *Provided nevertheless,* That the governor of said State is hereby authorized to select the same quantity of other lands in lieu thereof; subject, however, to the approval of the President of the United States.

SEC. 2. *And be it further enacted*, That all similar entries made upon the even-numbered sections of said reservations be also declared to be as good and valid as though said reservation had not been made.

Approved, March 2, 1849.

No. 166.—An Act to aid the State of Louisiana in draining the swamp lands therein.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, to aid the State of Louisiana in constructing the necessary levees and drains to reclaim the swamp and overflowed lands therein, the whole of those swamp and overflowed lands, which may be or are found unfit for cultivation, shall be, and the same are hereby, granted to that State.

SEC. 2. *And be it further enacted*, That as soon as the Secretary of the Treasury shall be advised, by the Governor of Louisiana, that that State has made the necessary preparation to defray the expenses thereof, he shall cause a personal examination to be made, under the direction of the surveyor general thereof, by experienced and faithful deputies, of all the swamp lands therein which are subject to overflow and unfit for cultivation; and a list of the same to be made out, and certified by the deputies and surveyor general, to the Secretary of the Treasury, who shall approve the same, so far as they are not claimed or held by individuals; and on that approval, the fee simple to said lands shall vest in the said State of Louisiana, subject to the disposal of the legislature thereof: *Provided however*, That the proceeds of said lands shall be applied exclusively, as far as necessary, to the construction of the levees and drains aforesaid.*

SEC. 3. *And be it further enacted*, That in making out a list of these swamp lands, subject to overflow and unfit for cultivation, all legal subdivisions, the greater part of which is of that character, shall be included in said list; but when the greater part of a sub-division is not of that character, the whole of it shall be excluded therefrom: *Provided however*, That the provisions of this act shall not apply to any lands fronting on rivers, creeks, bayous, water-courses, &c., which have been surveyed into lots or tracts under the acts of third March, eighteen hundred and eleven, and twenty-fourth May, eighteen hundred and twenty-four: *And provided further*, That the United States shall in no manner be held liable for any expense incurred in selecting these lands and making out the lists thereof, or for making any surveys that may be required to carry out the provisions of this act.

Approved, March 2, 1849.

No. 167.—An Act to establish the Home Department, and to provide for the Treasury Department an Assistant Secretary of the Treasury, and a commissioner of the customs.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, from and after the pas-

* See Nos. 182, 275, 319.

sage of this act, there shall be created a new executive department of the Government of the United States, to be called the Department of the Interior; the head of which department shall be called the Secretary of the Interior, who shall be appointed by the President of the United States, by and with the advice and consent of the Senate, and who shall hold his office by the same tenure, and receive the same salary, as the Secretaries of the other executive departments, and who shall perform all the duties assigned to him by this act.

SEC. 2. *And be it further enacted*, That the Secretary of the Interior shall exercise and perform all the acts of supervision and appeal in regard to the office of Commissioner of Patents, now exercised by the Secretary of State; and the said Secretary of the Interior shall sign all requisitions for the advance or payment of money out of the treasury on estimates or accounts, subject to the same adjustment or control now exercised on similar estimates or accounts by the First or Fifth Auditor and First Comptroller of the Treasury.

SEC. 3. *And be it further enacted*, That the Secretary of the Interior shall perform all the duties in relation to the General Land Office, of supervision and appeal, now discharged by the Secretary of the Treasury; and the said Secretary of the Interior shall sign all requisitions for the advance or payment of money out of the treasury, on estimates or accounts, approved or certified by the Commissioner of the General Land Office, subject to the same control now exercised by the First Comptroller of the Treasury.

SEC. 4. *And be it further enacted*, That the supervisory power now exercised by the Secretary of the Treasury over the accounts of the marshals, clerks, and other officers of all the courts of the United States, shall be exercised by the Secretary of the Interior, who shall sign all requisitions for the advance or payment of money out of the treasury, on estimates or accounts, subject to the same control now exercised on like estimates or accounts by the First Auditor and First Comptroller of the Treasury.

SEC. 5. *And be it further enacted*, That the Secretary of the Interior shall exercise the supervisory and appellate powers now exercised by the Secretary of the War Department, in relation to all the acts of the Commissioner of Indian Affairs; and shall sign all requisitions for the advance or payment of money out of the treasury, on estimates or accounts, subject to the same adjustment or control now exercised on similar estimates or accounts by the Second Auditor and Second Comptroller of the Treasury.

SEC. 6. *And be it further enacted*, That the Secretary of the Interior shall exercise the supervisory and appellate powers now exercised by the Secretaries of the War and Navy Departments, in relation to all the acts of the Commissioner of Pensions; and shall sign all requisitions for the advance or payment of money out of the treasury, on estimates or accounts, subject to the same adjustment or control now exercised on similar estimates or accounts by the Third or Fourth Auditors, and Second Comptroller of the Treasury.

SEC. 7. *And be it further enacted*, That the Secretary of the Interior shall exercise all the supervisory and appellate powers now exercised by the Secretary of State, in relation to all acts of marshals and others in taking and returning the census of the United States; and shall sign all requisitions for the advance or payment of money out of the treasury, on estimates or accounts, subject to the same adjustment or control now exercised over similar estimates and accounts by the Fifth Auditor and First Comptroller of the Treasury.

SEC. 8. *And be it further enacted*, That the supervisory and appellate

powers now exercised by the Secretary of the Treasury over the lead and other mines of the United States, and over the accounts of the agents thereof, shall be exercised by the Secretary of the Interior; who shall sign all requisitions for the advance or payment of money out of the treasury, on estimates or accounts, subject to the same adjustment or control now exercised on similar estimates or accounts by the Second Auditor and Second Comptroller of the Treasury.

SEC. 9. *And be it further enacted*, That the supervisory and appellate powers now exercised by the President of the United States over the Commissioner of Public Buildings, shall be exercised by the Secretary of the Interior; who shall sign all requisitions for the advance or payment of money out of the treasury, on estimates or accounts, subject to the same adjustment or control now exercised on similar estimates or accounts by the First Auditor and First Comptroller of the Treasury: *Provided*, That nothing in this section contained shall be construed to take from the presiding officers of the two houses of Congress the power now possessed by them to make and enforce rules and regulations for the care, preservation, orderly keeping, and police of the Capitol, and its appurtenances.

SEC. 10. *And be it further enacted*, That the Secretary of the Interior shall have and exercise a supervisory power and control over the board of inspectors and warden of the penitentiary of the District of Columbia; and shall sign all requisitions for the advance or payment of money out of the treasury on estimates or accounts, subject to the same adjustment or control now exercised on similar estimates or accounts by the First Auditor and First Comptroller of the Treasury.

SEC. 11. *And be it further enacted*, That the Secretary of the Interior is hereby authorized to appoint a chief clerk of his department, who shall receive a salary of two thousand dollars per annum; and that the President of the United States, on the recommendation of the said Secretary of the Interior, may transfer from the Treasury Department proper, to the Department of the Interior, such clerks in the office of the Secretary of the Treasury as perform the duties over which the supervision and control are given by this act to the Secretary of the Interior; which said clerks shall be hereafter subject to the appointing and removing power of the Secretary of the Interior, as also the clerks in the several bureaus heretofore appointed or removable by the heads of departments, which bureaus are transferred by this act to the Department of the Interior.

SEC. 12. *And be it further enacted*, That an officer shall be appointed by the President of the United States, by and with the advice and consent of the Senate, in the Department of the Treasury, as one of its bureaus, to be called the Commissioner of Customs, who shall perform all the acts and exercise all the powers, now devolved by law on the First Comptroller of the Treasury, relating to the receipts from customs and the accounts of collectors and other officers of the customs, or connected therewith; who shall hold his office by the same tenure, and receive the same amount of salary, as the First Auditor of the Treasury, and payable in the same manner. And the Secretary of the Treasury shall transfer from the office of the First Comptroller such clerks as may be necessary to the bureau of the Commissioner of Customs, for whom the said Secretary of the Treasury shall also appoint one chief clerk, at a salary of seventeen hundred dollars per annum.

SEC. 13. *And be it further enacted*, That an officer shall be appointed in the Treasury Department by the Secretary of the Treasury, to be called the Assistant Secretary of the Treasury, whose salary shall be three thousand dollars per annum, payable in the same manner as that of the Secretary

of the Treasury, who shall examine all letters, contracts, and warrants, prepared for the signature of the Secretary of the Treasury, and who shall perform all such other duties in the office of the Secretary of the Treasury, now performed by some of his clerks, as may be devolved on him by the Secretary of the Treasury; who shall also appoint a clerk at a salary of seventeen hundred dollars per annum, who shall perform such duties as a clerk in the Treasury Department, in aid of said Assistant Secretary, as may be assigned to him by the Secretary of the Treasury.

SEC. 14. *And be it further enacted*, That the Secretary of the Treasury shall transfer from the office of the First Comptroller one of his messengers, to perform the same duties in the office of the Commissioner of Customs, as also such portion of the contingent fund of the office of the First Comptroller as may be required in that of the Commissioner of Customs, in consequence of the transfer of clerks from one office to another, or the transfer of a messenger from that office to another. And the Secretary of the Treasury shall transfer one of his messengers to the office of the Secretary of the Interior, as also such portion of the contingent fund of the office of the Secretary of the Treasury as may be required in the office of the Secretary of the Interior, in consequence of the transfer of clerks from one department to the other.

SEC. 15. *And be it further enacted*, That nothing in this act contained shall be so construed as to affect or impair any of the powers conferred, or duties devolved, on the Secretary of the Treasury, in relation to the transfer, safe-keeping, or disbursement of public moneys, by the act of the sixth of August, one thousand eight hundred and forty-six, entitled "An act to provide for the better organization of the treasury, and for the collection, safe keeping, transfer, and disbursement of the public revenue."

Approved, March 3, 1849.

No. 168.—An Act to settle the title to certain tracts of land in the State of Arkansas.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That each and every owner of a Spanish or French land claim, or any part thereof, in the State of Arkansas, which was submitted for adjudication to the superior court of the late Territory of Arkansas, and by that court confirmed, being a *bona fide* subsequent purchaser for a valuable consideration, is hereby authorized to enter, within one year from the passage of this act, the land covered by said claim, or less quantity thereof, to be embraced in any legal subdivision, at the minimum price, under such regulations as the Commissioner of the General Land Office shall prescribe: *Provided however*, That the owner aforesaid shall be an occupant or cultivator of said land.

SEC. 2. *And be it further enacted*, That after the lapse of two years from the approval of this act, the sale of the lands embraced by the decrees of the superior court of Arkansas, which were on bills of review reversed, and which the President was, by the act of eighteen hundred and thirty-two, required to reserve from sale, which may then remain the property of the United States, shall no longer be reserved from sale by the President of the United States, and that the same may be brought into market under the existing laws.

Approved, March 3, 1849.

No. 169.—An Act to establish the Territorial government of Minnesota.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, from and after the passage of this act, all that part of the Territory of the United States which lies within the following limits, to wit: Beginning in the Mississippi river, at the point where the line of forty-three degrees and thirty minutes of north latitude crosses the same, thence running due west on said line, which is the northern boundary of the State of Iowa, to the northwest corner of the said State of Iowa, thence southerly along the western boundary of said State to the point where said boundary strikes the Missouri river, thence up the middle of the main channel of the Missouri river to the mouth of the White-earth river, thence up the middle of the main channel of the White-earth river to the boundary line between the possessions of the United States and Great Britain; thence east and south of east along the boundary line between the possessions of the United States and Great Britain to Lake Superior; thence in a straight line to the northernmost point of the State of Wisconsin in Lake Superior; thence along the western boundary line of said State of Wisconsin to the Mississippi river; thence down the main channel of said river to the place of beginning, be, and the same is hereby, erected into a temporary government by the name of the Territory of Minnesota: *Provided*, That nothing in this act contained shall be construed to inhibit the Government of the United States from dividing said Territory into two or more territories, in such manner and at such times as Congress shall deem convenient and proper, or from attaching any portion of said Territory to any other State or Territory of the United States.

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SEC. 12. *And be it further enacted*, That the inhabitants of the said Territory shall be entitled to all the rights, privileges and immunities heretofore granted and secured to the Territory of Wisconsin and to its inhabitants; and the laws in force in the Territory of Wisconsin at the date of the admission of the State of Wisconsin shall continue to be valid and operative therein, so far as the same be not incompatible with the provisions of this act, subject, nevertheless, to be altered, modified, or repealed, by the governor and legislative assembly of the said Territory of Minnesota; and the laws of the United States are hereby extended over and declared to be in force in said Territory, so far as the same, or any provision thereof, may be applicable.

* * * * *

SEC. 18. *And be it further enacted*, That when the lands in the said Territory shall be surveyed under the direction of the Government of the United States, preparatory to bringing the same into market, sections numbered sixteen and thirty-six in each township in said Territory shall be, and the same are hereby, reserved for the purpose of being applied to schools in said Territory, and in the States and Territories hereafter to be erected out of the same.

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Approved, March 3, 1849.

* See No. 226.

No. 170.—An Act to cause the northern boundary of the State of Iowa to be run and marked.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the surveyor general of Wisconsin and Iowa, under the direction of the Commissioner of the General Land Office, shall cause the northern boundary line of the State of Iowa to be run and marked, and suitable monuments placed thereon; and the said surveyor general shall return one copy of said survey to the General Land Office, and another copy to the executive of Iowa, to be deposited in the archives of that State.

Approved, March 3, 1849.

No. 171.—A Resolution to fix the meaning of the second section of an act for changing the location of the land office in the Chippewa land district, and establishing an additional land district in the State of Wisconsin.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the word "territory," in the second section of the act entitled "An act for changing the location of the land office in the Chippewa land district, and establishing an additional land district in the State of Wisconsin," approved at the present session of Congress, be construed to be and mean "State."

Approved, March 3, 1849.

No. 172.—An Act further to extend the time for locating Virginia military land warrants, and returning surveys thereon to the General Land Office.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act entitled "An act further to extend the time for locating Virginia military land warrants, and returning surveys thereon to the General Land Office," approved July fifth, eighteen hundred and forty-eight, and as to all warrants issued prior to the tenth day of August, eighteen hundred and forty, and no others, be and the same is hereby, revived and continued in force until the first day of January, eighteen hundred and fifty-two.*

SEC. 2. *And be it further enacted,* That the same right and privilege is hereby also extended for the same time to all such warrants as have issued subsequent to said tenth day of August, eighteen hundred and forty: *Provided,* That before the location thereof, it shall be shown to the satisfaction of the Secretary of the Treasury, that such warrant was issued justly and legally, and that the person who received said warrant was legally entitled to the same.

Approved, February 20, 1850.

* See Nos. 47, 146.

No. 173.—An Act authorizing the negotiation of treaties with the Indian tribes in the Territory of Oregon, for the extinguishment of their claims to lands lying west of the Cascade mountains, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President be authorized to appoint one or more commissioners to negotiate treaties with the several Indian tribes in the territory of Oregon, for the extinguishment of their claims to lands lying west of the Cascade mountains; and if found expedient and practicable, for their removal east of said mountains; also, for obtaining their assent and submission to the existing laws regulating trade and intercourse with the Indian tribes in the other territories of the United States, so far as they may be applicable to the tribes in the said Territory of Oregon; the compensation to such commissioner or commissioners not to exceed the rate heretofore allowed for similar services.

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Approved, June 5, 1850.

No. 174.—An Act in relation to donations of land to certain persons in the State of Arkansas.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all claims to donations of land in the State of Arkansas, which have been adjudicated and allowed by the register and receiver of the proper land district, in virtue of the provisions of the eighth section of the act of Congress, approved on the twenty-fourth of May, one thousand eight hundred and twenty-eight, entitled "An act to aid the State of Ohio in extending the Miami Canal from Dayton to Lake Erie, and to grant a quantity of land to said State, to aid in the construction of canals authorized by law, and for making donations of land to certain persons in Arkansas Territory," and of other subsequent acts of Congress on the same subject and which have not been located and patent certificates issued therefor, or which having been so located were compelled to yield to other and prior rights, either in whole or in part, and not subsequently re-located within the period fixed by law, may be entered with the register of any one of the land offices in the State of Arkansas, at any time within one year from the passage of this act, in the same manner and under the same restrictions and conditions, as existed prior to the twenty-fourth day of May, one thousand eight hundred and thirty-eight, the day last limited for the location of these claims: *Provided,* That no such claim shall be so located against which fraud has been or may be alleged until all objection thereto shall have been removed, to the satisfaction of the Commissioner of the General Land Office.

Approved, August 30, 1850.

No. 175.—An Act proposing to the State of Texas the establishment of her northern and western boundaries, the relinquishment by the said State of all territory claimed by her exterior to said boundaries, and of all her claims upon the United States, and to establish a territorial government for New Mexico.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following propositions shall be, and the same hereby are, offered to the State of Texas, which, when agreed to by the said State, in an act passed by the General Assembly, shall be binding and obligatory upon the United States, and upon the said State of Texas: *Provided,* The said agreement by the said General Assembly shall be given on or before the first day of December, eighteen hundred and fifty:

First. The State of Texas will agree that her boundary on the north shall commence at the point at which the meridian of one hundred degrees west from Greenwich is intersected by the parallel of thirty-six degrees thirty minutes north latitude, and shall run from said point due west to the meridian of one hundred and three degrees west from Greenwich; thence her boundary shall run due south to the thirty-second degree of north latitude; thence on the said parallel of thirty-two degrees of north latitude to the Rio Bravo del Norte, and thence with the channel of said river to the Gulf of Mexico.

Second. The State of Texas cedes to the United States all her claim to territory exterior to the limits and boundaries which she agrees to establish by the first article of this agreement.

* * * * *

Fourth. The United States, in consideration of said establishment of boundaries, cession of claim to territory, and relinquishment of claims, will pay to the State of Texas the sum of ten million of dollars in a stock bearing five per cent. interest, and redeemable at the end of fourteen years, the interest payable half-yearly at the Treasury of the United States.

Fifth. Immediately after the President of the United States shall have been furnished with an authentic copy of the act of the General Assembly of Texas accepting these propositions, he shall cause the stock to be issued in favor of the State of Texas, as provided for in the fourth article of this agreement: *Provided also,* That no more than five millions of said stock shall be issued until the creditors of the State holding bonds and other certificates of stock of Texas for which duties on imports were specially pledged, shall first file at the Treasury of the United States releases of all claim against the United States for or on account of said bonds or certificates in such form as shall be prescribed by the Secretary of the Treasury and approved by the President of the United States. *Provided,* That nothing herein contained shall be construed to impair or qualify any thing contained in the third article of the second section of the "joint resolution for annexing Texas to the United States," approved March first, eighteen hundred and forty-five, either as regards the number of States that may hereafter be formed out of the State of Texas, or otherwise.

SEC. 2. *And be it further enacted,* That all that portion of the Territory of the United States bounded as follows: Beginning at a point in the Colorado river where the boundary line with the republic of Mexico crosses the same; thence eastwardly with the said boundary line to the Rio Grande; thence following the main channel of said river to the parallel of the thirty-second degree of north latitude; thence east with said degree to its intersection with the one hundred and third degree of longitude west of Greenwich; thence north with said degree of longitude to the parallel of thirty-eighth degree of north latitude; thence west with said parallel to the sum-

mit of the Sierra Madre; thence south with the crest of said mountains to the thirty-seventh parallel of north latitude; thence west with said parallel, to its intersection with the boundary line of the State of California; thence with said boundary line to the place of beginning—be, and the same is hereby erected into a temporary government by the name of the Territory of New Mexico: *Provided*, That nothing in this act contained shall be construed to inhibit the Government of the United States from dividing said Territory into two or more Territories, in such manner and at such times as Congress shall deem convenient and proper, or from attaching any portion thereof to any other Territory or State; *And provided further*, That when admitted as a State, the said Territory, or any portion of the same, shall be received into the Union, with or without slavery, as their constitution may prescribe at the time of their admission.

* * * * *

SEC. 7. *And be it further enacted*, That the legislative power of the Territory, shall extend to all rightful subjects of legislation, consistent with the Constitution of the United States and the provisions of this act; but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents. All the laws passed by the Legislative Assembly and Governor, shall be submitted to the Congress of the United States and if disapproved shall be null and of no effect.

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SEC. 15. *And be it further enacted*, That when the lands in said Territory shall be surveyed under the direction of the Government of the United States, preparatory to bringing the same into market, sections numbered sixteen and thirty-six in each township in said Territory shall be, and the same are hereby reserved for the purpose of being applied to schools in said Territory, and in the States and Territories hereafter to be erected out of the same.

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SEC. 17. *And be it further enacted*, That the Constitution, and all laws of the United States which are not locally inapplicable, shall have the same force and effect within the said Territory of New Mexico as elsewhere within the United States.

SEC. 18. *And be it further enacted*, That the provisions of this act be, and they are hereby suspended until the boundary between the United States and the State of Texas shall be adjusted, and when such adjustment shall have been effected, the President of the United States shall issue his proclamation, declaring this act to be in full force and operation, and shall proceed to appoint the officers herein provided to be appointed in and for said Territory.

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Approved, September 9, 1850.

No. 176.—An Act for the admission of the State of California into the Union.

Whereas the people of California have presented a constitution and asked admission into the Union, which constitution, was submitted to Congress by the President of the United States, by message dated February

thirteenth, eighteen hundred and fifty, and which, on due examination, is found to be republican in its form of government:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the State of California shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original States in all respects whatever.

SEC. 2. *And be it further enacted,* That until the representatives in Congress shall be apportioned according to an actual enumeration of the inhabitants of the United States, the State of California shall be entitled to two representatives in Congress.

SEC. 3. *And be it further enacted,* That the said State of California is admitted into the Union upon the express condition that the people of said State, through their legislature or otherwise, shall never interfere with the primary disposal of the public lands within its limits, and shall pass no law and do no act whereby the title of the United States to, and right to dispose of, the same shall be impaired or questioned; and that they shall never lay any tax or assessment of any description whatsoever upon the public domain of the United States, and in no case shall non-resident proprietors, who are citizens of the United States, be taxed higher than residents; and that all the navigable waters within the said State shall be common highways, and forever free, as well to the inhabitants of said State as to the citizens of the United States, without any tax, impost, or duty therefor: *Provided,* That nothing herein contained shall be construed as recognizing or rejecting the propositions tendered by the people of California as articles of compact in the ordinance adopted by the convention which formed the constitution of that State.

Approved, September 9, 1850.

No. 177.—An Act to establish a Territorial Government for Utah.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all that part of the territory of the United States included within the following limits, to wit: bounded on the west by the State of California, on the north by the Territory of Oregon, and on the east by the summit of the Rocky mountains, and on the south by the thirty-seventh parallel of north latitude, be, and the same is hereby, created into a temporary government, by the name of the Territory of Utah; and when admitted as a State, the said Territory, or any portion of the same, shall be received into the Union, with or without slavery, as their constitution may prescribe at the time of their admission: *Provided,* That nothing in this act contained shall be construed to inhibit the Government of the United States from dividing said Territory into two or more Territories, in such manner and at such times as Congress shall deem convenient and proper, or from attaching any portion of said Territory to any other State or Territory of the United States.

SEC. 6. *And be it further enacted,* That the legislative power of said Territory shall extend to all rightful subjects of legislation, consistent with the Constitution of the United States and the provisions of this act; but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the

lands or other property of non-residents be taxed higher than the lands or other property of residents. All the laws passed by the Legislative Assembly and Governor shall be submitted to the Congress of the United States, and if disapproved shall be null and of no effect.

* * * * *

SEC. 15. *And be it further enacted*, That when the lands in the said Territory shall be surveyed under the direction of the Government of the United States, preparatory to bringing the same into market, sections numbered sixteen and thirty-six in each township in said Territory shall be, and the same are hereby, reserved for the purpose of being applied to schools in said Territory, and in the States and Territories hereafter to be erected out of the same.

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SEC. 17. *And be it further enacted*, That the Constitution and laws of the United States are hereby extended over and declared to be in force in said Territory of Utah, so far as the same, or any provision thereof, may be applicable.

Approved, September 9, 1850.

No. 178.—An Act granting the right of way, and making a grant of land to the States of Illinois, Mississippi and Alabama in aid of the construction of a railroad from Chicago to Mobile.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the right of way through the public lands be, and the same is hereby, granted to the State of Illinois for the construction of a railroad from the southern terminus of the Illinois and Michigan canal to a point at or near the junction of the Ohio and Mississippi rivers, with a branch of the same to Chicago on Lake Michigan, and another via the town of Galena in said State, to Dubuque in the State of Iowa, with the right also, to take necessary materials of earth, stones, timber, &c., for the construction thereof: *Provided*, That the right of way shall not exceed one hundred feet on each side of the length thereof, and a copy of the survey of said road and branches made under the direction of the Legislature, shall be forwarded to the proper local land offices respectively, and to the General Land Office at Washington city, within ninety days after the completion of the same.

SEC. 2. *And be it further enacted*, That there be, and is hereby, granted to the State of Illinois for the purpose of aiding in making the railroad and branches aforesaid, every alternate section of land designated by even numbers, for six sections in width on each side of said road and branches; but in case it shall appear that the United States have, when the line or route of said road and branches is definitely fixed by the authority aforesaid, sold any part of any section hereby granted, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents to be appointed by the Governor of said State, to select subject to the approval aforesaid from the lands of the United States most contiguous to the tier of sections above specified, so much land in alternate sections or parts of sections, as shall be equal to such lands as the United States have sold, or to which the right of pre-emption has attached as aforesaid,

* See No. 205, 352.

which lands being equal in quantity to one-half of six sections in width on each side of said road and branches, the State of Illinois shall have and hold to and for the use and purpose aforesaid : *Provided*, That the lands to be so located shall in no case be further than fifteen miles from the line of the road : *And further provided*, The construction of said road shall be commenced at its southern terminus, at or near the junction of the Ohio and Mississippi rivers, and its northern terminus upon the Illinois and Michigan canal simultaneously, and continued from each of said points until completed, when said branch roads shall be constructed, according to the survey and location thereof : *Provided further*, That the lands hereby granted shall be applied in the construction of said road and branches respectively, in quantities corresponding with the grant for each, and shall be disposed of only as the work progresses, and shall be applied to no other purpose whatsoever : *And provided further*, That any and all lands reserved to the United States by the act entitled "An act to grant a quantity of land to the State of Illinois, for the purpose of aiding in opening a canal to connect the waters of the Illinois river with those of Lake Michigan, approved March second, eighteen hundred and twenty-seven be and the same are hereby, reserved to the United States from the operations of this act.

SEC. 3. *And be it further enacted*, That the sections and parts of sections of land which, by such grant, shall remain to the United States, within six miles on each side of said road and branches, shall not be sold for less than double the minimum price of the public lands when sold.

SEC. 4. *And be it further enacted*, That the said lands hereby granted to the said State shall be subject to the disposal of the Legislature thereof, for the purposes aforesaid and no other ; and the said railroad and branches shall be and remain a public highway, for the use of the Government of the United States, free from toll or other charge, upon the transportation of any property or troops of the United States.

SEC. 5. *And be it further enacted*, That if the said railroad shall not be completed within ten years, the said State of Illinois shall be bound to pay to the United States the amount which may be received upon the sale of any part of said lands by said State, the title to the purchasers under said State remaining valid ; and the title to the residue of said lands shall reinvest in the United States, to have and hold the same in the same manner as if this act had not been passed.*

SEC. 6. *And be it further enacted*, That the United States mail shall at all times be transported on the said railroad under the direction of the Post Office Department, at such price as the Congress may by law direct.

SEC. 7. *And be it further enacted*, That in order to aid in the continuation of said central railroad from the mouth of the Ohio river to the city of Mobile, all the rights, privileges, and liabilities hereinbefore conferred on the State of Illinois shall be granted to the States of Alabama and Mississippi respectively, for the purpose of aiding in the construction of a railroad from said city of Mobile to a point near the mouth of the Ohio river, and that public lands of the United States to the same extent in proportion to the length of the road on the same terms, limitations, and restrictions in every respect shall be, and is hereby granted to said States of Alabama and Mississippi respectively.

Approved, September 20, 1850.

* Time extended. See 352.

No. 179.—An Act providing for the examination and settlement of claims for land at the Sault Ste. Marie, in Michigan.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the register and receiver of the land office at the Sault Ste. Marie be, and they are hereby, authorized to examine, and report upon claims to lots at the Sault Ste. Marie, in township forty-seven north, of ranges one east and one west, in Michigan, according to the provisions hereinafter contained, and pursuant to such instructions as may be given by the Commissioner of the General Land Office.

SEC. 2. *And be it further enacted,* That the said commissioner shall cause the register and receiver to be furnished with a map, on a large scale, of the lines of the public surveys at the Sault Ste. Marie, and it shall be the duty of the Secretary of War to direct the proper military officer, on the application of the register and receiver, to designate, or cause to be designated, upon the map aforesaid, the position and the extent of lots necessary for military purposes, as also the position and the extent of any other lot or lots, which may be required for other public purposes, and also the position and extent of the Indian agency tract, and of the Indian reserve.

SEC. 3. *And be it further enacted,* That, in the case of any person or persons, or the legal representatives of any person or persons, who are the present bona fide claimants, under the original claims, which are entered in book number seven of the report of the Board of Commissioners, under the act of Congress approved twenty-first of February, eighteen hundred and twenty-three, entitled "An act to revive and continue in force certain acts for the adjustment of land claims in the Territory of Michigan," it shall and may be lawful for such person, within one year from the passage of this act, to present a *sworn* notice in writing to the register and receiver, setting forth the nature of his claim, with the front and depth necessary to embrace his settlement and improvements, and its position and limits, as accurately as practicable, on the public surveys; also the length of time it has been settled by the present claimant, and the estimated value at the time his right originated, and the estimated value at the present time, exclusive of improvements; and it shall be the duty of the register and receiver to receive and consider testimony, which may be presented in each case, and to call for such further testimony as they may deem necessary, in order to enable them to determine the precise nature of each claim or title, and ascertain under whom the same originated, and to fix its position and extent on the public surveys, and its present value, exclusive of improvements, and also to ascertain the value of the improvements, and further to ascertain whether it interferes with any adverse claim, and the extent of, and nature of, such interference; and for the purposes aforesaid, the register and receiver are hereby authorized each to administer oaths, or affirmations, and it shall also be the duty of those officers to record all notices and testimony in support of each claim; and for administering oaths they shall be allowed a fee of twelve and a-half cents, and a like sum for every hundred words of testimony which they may record, to be paid by the claimants, and equally divided between the officers aforesaid.

SEC. 4. *And be it further enacted,* That in the case of any bona fide claimant who has no right under an original claim, entered in the aforesaid book number seven, but who, on the first day of January, in the year of our Lord eighteen hundred and forty-nine, had reduced a lot into possession, and is an actual and bona fide settler thereon, or occupant thereof, it

shall and may be lawful for him to file a *sworn* notice, stating how long he has been in the actual possession of the lot, the nature of his improvements, the extent of front and depth requisite to embrace his actual settlement and improvements, the estimated value of the lot at the time of his settlement, and its present value, exclusive of improvements, as also the value of such improvements, and also designating, as accurately as practicable, its position upon the public surveys; and it shall and may be lawful for the aforesaid officers, also, to take all necessary testimony in this class of cases in like manner, and perform similar duties as required in the foregoing section, and to receive any notice and evidence of any missionary claim from any party authorized to act, both as to the nature and extent of the same, and the grounds on which it may be entitled to equitable consideration.

SEC. 5. *And be it further enacted*, That it shall also be the duty of the land officers to examine and arrange the notices and testimony in all cases filed under this act, and the cases contemplated by the third section, which they may confirm, shall be placed in abstract A, first class, and those under that section which may be rejected by them, shall be placed in abstract A, second class; and in all cases contemplated by the fourth section of this act, the confirmation of the commissioners shall be placed in abstract B, first class, and their rejections in abstract B, second class.

SEC. 6. *And be it further enacted*, That in the aforesaid abstracts, the register and receiver shall designate the number of each claim, name of present and of original claimant, area, present value of the lot, exclusive of improvements, and the amount, which in their opinion, it would be just to require as a payment for the same to the Government; and the said officers shall designate on the aforesaid map of the public surveys the location of each claim, as near as it can be ascertained from the testimony, with the estimated *actual* value, and the assessment thereon of the sum which, in their judgment, should be paid for the same to the Government.

SEC. 7. *And be it further enacted*, That the surveyor general at Detroit, on being notified of the completion by the land officers of the aforesaid abstracts and map, shall despatch a skilful deputy to the Sault Ste. Marie, who shall file in the land office at that place his affidavit faithfully and impartially to discharge his duty, and thereupon there shall be delivered to him the said abstracts and map, and he shall then proceed forthwith to lay off and survey the village of Sault Ste. Marie into town lots, streets, avenues, public squares, out-lots, having regard to the lots and streets already actually surveyed, existing or established, and having regard also, to the existing limits and extent of the lots, and to the existing limits and extent of the lots covered by the claims which shall have been adjudicated by the register and receiver; and after such surveys shall have been completed, the aforesaid deputy shall prepare a plat exhibiting, in connexion with the lines of the public surveys, the exterior lines of the whole village, also the squares, individual lots, and the public lots, and also the out-lots, designating the lots reserved for military or other purposes, according to the extent and limits of the same, as fixed by the proper military officers, pursuant to the requirements of the second section of this act, and specifying the name of each claimant of the individual lot, and whether confirmed or rejected, the sum assessed by the register and receiver as a payment which should be made in each case by the party, and also designating the vacant in-lots and out-lots, the former of which shall be subdivided into lots not to exceed each a quarter of an acre, and the latter not to exceed two acres each; and it shall be the duty of the said deputy, from the best information he can obtain, and after conference with the land officers, to specify on the

survey of each vacant lot the actual present estimated value, and it shall be the duty of the aforesaid deputy to return to the register and receiver their abstracts and map, and to submit to them his plat of the actual surveys, and if they shall be satisfied that it is in accordance with their adjudications, they shall append a certificate to that effect, and the said deputy shall then transmit the said plat with the field notes to the surveyor general at Detroit for examination of the work, and if that officer shall find it faithfully and properly executed, he shall allow the said deputy a per diem of five dollars for every day actually and necessarily engaged in the preliminary examination and surveys, and in the construction of the plat, and shall also pay all necessary expenses.

SEC. 8. *And be it further enacted*, That it shall be the duty of the surveyor general, upon the approval of the plat, or actual survey by his deputy, to return the said plat to the register and receiver, who shall thereupon transmit the same, with their abstracts, maps, and record of testimony, to the Commissioner of the General Land Office, whose decision in every case shall be final, and binding upon the parties and the Government, and who shall have power either to affirm, modify, or reverse the decisions of the register and receiver, and to authorize them to grant a certificate upon the cash payment to the receiver, of what may be determined to be a fair assessment on the lot confirmed; and upon such payment being made, and the return of the certificate to the General Land Office, a patent shall issue. And the said register and receiver shall each receive, from the proceeds of such sales, the sum of five dollars for every claim examined and adjudicated by them under this act.

SEC. 9. *And be it further enacted*, That it shall and may be lawful for the commissioner to order into market, after public notice of at least two months, all vacant lots, or lots to which a claim may be rejected, and to sell the same for cash to the highest bidder, subject to a minimum of two-thirds of their estimated value; and upon such sales being made, and proper returns reported to the General Land Office, the commissioner, if the proceedings are found regular, shall be authorized to issue patents.

SEC. 10. *And be it further enacted*, That after all the claims shall have been adjudicated, surveyed, and the vacant lots sold, it shall be the duty of the proper accounting officers of the Treasury to ascertain the net amount of sales, after deducting all expenses incident to the execution of this act, and such amount shall be paid over by the Secretary of the Treasury to the trustees, or other constituted authorities, of Sault Ste. Marie, to be expended by them in the improvements of the streets and erection of public buildings.

Approved, September 26, 1850.

No. 180.—An Act to reduce the minimum price of the mineral lands in the Lake Superior district in Michigan, and in the Chippewa district in Wisconsin.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the mineral lands in the Lake Superior district in Michigan, and in the Chippewa district in Wisconsin, shall be offered for public sale in the same manner, and be subject to the same minimum price, and the same rights of pre-emption, as the other public lands of the United States; and such portions of the act of

first March, eighteen hundred and forty-seven, "to establish a land office in the northern part of Michigan, and to provide for the sale of the mineral lands in the State of Michigan," and of the act of the third March, eighteen hundred and forty-seven, "to create an additional land district in the Territory of Wisconsin, and for other purposes," as are inconsistent with the provisions of this act, shall be, and the same are hereby, repealed: *Provided however*, That the right given by those acts of first and third March, eighteen hundred and forty-seven, to lessees, occupants, and permittees to enter to the extent of their leases and permits, and no less, shall not be considered as impaired by this act; but said lessees, occupants and permittees shall be authorized to enter the land covered by their leases, occupancy and permits, respectively, as therein provided, at the minimum price fixed by this act.

SEC. 2. *And be it further enacted*, That the holder of a lease or permit covering more than one full section of the mineral lands, as aforesaid, shall be entitled, on the surrender and annulment of said lease or permit at the proper land-office, to purchase, if he shall elect to do so, one full section, and no more, of the land covered by said lease or permit, at a minimum price of two dollars and fifty cents per acre.

Approved, September 26, 1850.

No. 181.—An Act to create the office of surveyor general of the public lands in Oregon, and to provide for the survey, and to make donations to settlers of the said public lands.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a Surveyor General shall be appointed for the Territory of Oregon, who shall have the same authority, perform the same duties respecting the public lands and private land claims in the Territory of Oregon as are vested in and required of the surveyor of lands in the United States, northwest of the Ohio, except as hereinafter provided.

SEC. 2. *And be it further enacted*, That the said Surveyor General shall establish his office at such place within the said Territory as the President of the United States may from time to time direct; he shall be allowed an annual salary of two thousand five hundred dollars to be paid quarter yearly, and to commence at such time as he shall enter into bond, with competent security, for the faithful discharge of the duties of his office. There shall be, and hereby is appropriated the sum of four thousand dollars, or as much thereof as is necessary for clerk hire in his office; and the further sum of one thousand dollars per annum for office rent, fuel, books, stationery, and other incidental expenses of his office, to be paid out of the appropriation for surveying the public lands.

SEC. 3. *And be it further enacted*, That if in the opinion of the Secretary of the Interior it be preferable, the surveys in said Territory shall be made after what is known as the geodetic method, under such regulations, and upon such terms as may be provided by the Secretary of the Interior or other department having charge of the surveys of the public lands, and that said geodetic surveys shall be followed by topographical surveys as Congress may from time to time authorize and direct; but if the present mode of survey be adhered to, then it shall be the duty of said surveyor to

* Amended, See Nos. 218, 244, 266, 337.

cause a base line, and meridian to be surveyed, marked, and established, in the usual manner, at or near the mouth of the Willamette river; and he shall also cause to be surveyed, in townships and sections, in the usual manner, and in accordance with the laws of the United States, which may be in force, the district of country lying between the summit of the Cascade mountains and the Pacific ocean, and south and north of the Columbia river: *Provided however*, That none other than township lines shall be run where the land is deemed unfit for cultivation. That no deputy surveyor shall charge for any line except such as may be actually run and marked, nor for any line not necessary to be run; and that the whole cost of surveying shall not exceed the rate of eight dollars per mile for every mile and part of mile actually surveyed and marked.

SEC. 4. *And be it further enacted*, That there shall be, and hereby is, granted to every white settler or occupant of the public lands, American half-breed Indians included, above the age of eighteen years, being a citizen of the United States, or having made a declaration according to law, of his intention to become a citizen, or who shall make such declaration on or before the first day of December, eighteen hundred and fifty-one, now residing in said Territory, or who shall become a resident thereof on or before the first day of December, eighteen hundred and fifty, and who shall have resided upon and cultivated the same for four consecutive years, and shall otherwise conform to the provisions of this act, the quantity of one half section, or three hundred and twenty acres of land, if a single man, and if a married man, or if he shall become married within one year from the first day of December, eighteen hundred and fifty, the quantity of one section or six hundred and forty acres, one half to himself and the other half to his wife, to be held by her in her own right: and the Surveyor General shall designate the part enuring to the husband and that to the wife, and enter the same on the records of his office: and in all cases where such married persons have complied with the provisions of this act so as to entitle them to the grant as above provided, whether under the late provisional government of Oregon, or since, and either shall have died before patent issues, the survivor and children or heirs of the deceased, shall be entitled to the share or interest of the deceased in equal proportions, except where the deceased shall otherwise dispose of it by testament duly and properly executed according to the laws of Oregon: *Provided*, That no alien shall be entitled to a patent to land, granted by this act, until he shall produce to the Surveyor General of Oregon, record evidence that his naturalization as a citizen of the United States has been completed; but if any alien having made his declaration of intention to become a citizen of the United States after the passage of this act, shall die before his naturalization shall be completed, the possessory right acquired by him under the provisions of this act shall descend to his heirs at law, or pass to his devisees, to whom, as the case may be, the patent shall issue: *Provided further*, That in all cases provided for in this section, the donation shall embrace the land actually occupied and cultivated by the settler thereon: *Provided further*, That all future contracts by any person or persons entitled to the benefit of this act for the sale of the land to which he or they may be entitled under this act before he or they have received a patent therefor, shall be void: *Provided further however*, That this section shall not be so construed as to allow those claiming rights under the treaty with Great Britain relative to the Oregon Territory to claim both under this grant and the treaty, but merely to secure them the election, and confine them to a single grant of land.

SEC. 5. *And be it further enacted*, That to all white male citizens of the

United States, or persons who shall have made a declaration of intention to become such, above the age of twenty-one years, emigrating to and settling in said Territory between the first day of December, eighteen hundred and fifty, and the first day of December, eighteen hundred and fifty-three;* and to all white male American citizens, not hereinbefore provided for, becoming one-and-twenty years of age, in said Territory, and settling there between the times last aforesaid, who shall in other respects comply with the foregoing section and the provisions of this law, there shall be, and hereby is, granted the quantity of one-quarter section or one hundred and sixty acres of land, if a single man; or if married, or if he shall become married within one year from the time of arriving in said Territory, or within one year after becoming twenty-one years of age as aforesaid, then the quantity of one half section, or three hundred and twenty acres, one half to the husband and the other half to the wife in her own right, to be designated by the Surveyor General as aforesaid: *Provided always*, That no person shall ever receive a patent for more than one donation of land in said Territory in his or her own right: *Provided*, That no mineral lands shall be located or granted under the provisions of this act.

SEC. 6. *And be it further enacted*, That within three months after the survey has been made, or where the survey has been made before the settlement commenced, then within three months from the commencement of such settlement, each of said settlers shall notify the Surveyor General to be appointed under this act, of the precise tract or tracts claimed by them respectively under this law, and in all cases it shall be in a compact form; and where it is practicable so to do, the land so claimed shall be taken as nearly as practicable by legal subdivisions; but where that cannot be done it shall be the duty of the said Surveyor General to survey and mark each claim with the boundaries as claimed, at the request and expense of the claimant; the charge for the same in such case not to exceed the price paid for surveying the public lands. The Surveyor General shall enter a description of such claims in a book to be kept by him for that purpose, and note, temporarily on the township plats the tract or tracts so designated, with the boundaries; and whenever a conflict of boundaries shall arise prior to issuing the patent, the same shall be determined by the Surveyor General: *Provided*, That after the first December next, all claims shall be bounded by lines running east and west, and north and south: *And provided further*, That after the survey is made, all claims shall be made in conformity to the same, and in compact form.

SEC. 7. *And be it further enacted*, That within twelve months after the surveys have been made, or, where the survey has been made before the settlement, then within twelve months from the time the settlement was commenced, each person claiming a donation right under this act, shall prove to the satisfaction of the Surveyor General, or of such other officer as may be appointed by law for that purpose, that the settlement and cultivation required by this act had been commenced, specifying the time of the commencement; and at any time after the expiration of four years from the date of such settlement, whether made under the laws of the late provisional government or not, shall prove in like manner, by two disinterested witnesses, the fact of continued residence and cultivation required by the fourth section of this act; and upon such proof being made, the Surveyor General, or other officer appointed by law for that purpose, shall issue certificates under such rules and regulations as may be prescribed by the Commissioner of the General Land Office, setting forth the facts in the case,

* Extended. See No. 218.

and specifying the land to which the parties are entitled. And the said Surveyor General shall return the proof so taken to the office of the Commissioner of the General Land Office, and if the said Commissioner shall find no valid objection thereto, patents shall issue for the land according to the certificates aforesaid, upon the surrender thereof.

SEC. 8. *And be it further enacted*, That upon the death of any settler before the expiration of the four years continued possession required by this act, all the rights of the deceased under this act shall descend to the heirs at law of such settler, including the widow, where one is left, in equal parts; and proof of compliance with the conditions of this act up to the time of the death of such settler shall be sufficient to entitle them to the patent.

SEC. 9. *And be it further enacted*, That no claim to a donation right under the provisions of this act, upon sections sixteen or thirty-six, shall be valid or allowed if the residence and cultivation upon which the same is founded shall have commenced after the survey of the same; nor shall such claim attach to any tract or parcel of land selected for a military post, or within one mile thereof, or to any other land reserved for Governmental purposes, unless the residence and cultivation thereof shall have commenced previous to the selection or reservation of the same for such purposes.

SEC. 10. *And be it further enacted*, That there be, and hereby is, granted to the Territory of Oregon the quantity of two townships of land in said Territory, west of the Cascade mountains, and to be selected in legal subdivisions after the same has been surveyed, by the Legislative Assembly of said Territory, in such manner as it may deem proper, one to be located north, and the other south of the Columbia river, to aid in the establishment of a University in the Territory of Oregon, in such manner as the said Legislative Assembly may direct, the selection to be approved by the Surveyor General.

SEC. 11. *And be it further enacted*, That what is known as the "Oregon city claim," excepting the Abernethy Island, which is hereby confirmed to the legal assigns of the Willamette Milling and Trading Companies, shall be set apart and be at the disposal of the Legislative Assembly, the proceeds thereof to be applied by said Legislative Assembly to the establishment and endowment of a University, to be located at such place in the Territory as the Legislative Assembly may designate: *Provided however*, That all lots and parts of lots in said claim, sold or granted by Dr. John McLaughlin, previous to the fourth day of March, eighteen hundred and forty-nine, shall be confirmed to the purchaser or donee, or their assigns, to be certified to the Commissioner of the General Land Office, by the Surveyor General, and patents to issue on said certificates as in other cases: *Provided further*, That nothing in this act contained shall be so construed or executed, as in any way to destroy or affect any rights to land in said Territory, holden or claimed under the provisions of the treaty or treaties existing between this country and Great Britain.

SEC. 12. *And be it further enacted*, That all persons claiming land under any of the provisions of this act, by virtue of settlement and cultivation commenced subsequent to the first of December, in the year eighteen hundred and fifty, shall first make affidavit before the Surveyor General, who is hereby authorized to administer all such oaths or affirmations, or before some other competent officer, that the land claimed by them is for their own use and cultivation; that they are not acting directly or indirectly as agent for, or in the employment of others in making such claims; and that they have made no sale or transfer, or any arrangement or agreement for any

sale, transfer, or alienation of the same, or by which the said land shall enure to the benefit of any other person. And all affidavits required by this act shall be entered of record by the Surveyor General in a book to be kept by him for that purpose; and on proof before a court of competent jurisdiction, that any of such oaths or affirmations are false or fraudulent, the persons making such false or fraudulent oaths or affirmations shall be subject to all the pains and penalties of perjury.

SEC. 13. *And be it further enacted*, That all questions arising under this act shall be adjudged by the Surveyor General as preliminary to a final decision according to law; and it shall be the duty of the Surveyor General, under the direction of the Commissioner of the General Land Office, to cause proper tract books to be opened for the lands in Oregon, and to do and perform all other acts and things necessary and proper to carry out the provisions of this act.

SEC. 14. *And be it further enacted*, That no mineral lands, nor lands reserved for salines, shall be liable to any claim under and by virtue of the provisions of this act: and that such portions of the public lands as may be designated under the authority of the President of the United States for forts, magazines, arsenals, dock-yards, and other needful public uses, shall be reserved and excepted from the operation of this act: *Provided*, That if it shall be deemed necessary in the judgment of the President to include in any such reservation the improvements of any settler made previous to the passage of this act, it shall in such case, be the duty of the Secretary of War to cause the value of such improvements to be ascertained, and the amount so ascertained shall be paid to the party entitled thereto, out of any money not otherwise appropriated.

Approved, September 27, 1850.

No. 182.—An Act to enable the State of Arkansas and other States to reclaim the "swamp lands" within their limits.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That to enable the State of Arkansas to construct the necessary levees and drains to reclaim the swamp and overflowed lands therein, the whole of those swamp and overflowed lands, made unfit thereby for cultivation, which shall remain unsold at the passage of this act, shall be, and the same are hereby, granted to said State.

SEC. 2. *And be it further enacted*, That it shall be the duty of the Secretary of the Interior, as soon as may be practicable after the passage of this act, to make out an accurate list and plats of the lands described as aforesaid, and transmit the same to the Governor of the State of Arkansas; and at the request of said Governor cause a patent to be issued to the State therefor; and on that patent, the fee simple to said lands shall vest in the said State of Arkansas, subject to the disposal of the Legislature thereof: *Provided however*, That the proceeds of said lands, whether from sale or by direct appropriation in kind, shall be applied, exclusively, as far as necessary, to the purpose of reclaiming said lands by means of the levees and drains aforesaid.

SEC. 3. *And be it further enacted*, That in making out a list and plats,

* See Nos. 166, 275, 319.

of the land aforesaid, all legal subdivisions, the greater part of which is "wet and unfit for cultivation," shall be included in said list and plats; but when the greater part of a subdivision is not of that character, the whole of it, shall be excluded therefrom.

SEC. 4. *And be it further enacted*, That the provisions of this act be extended to, and their benefits be conferred upon, each of the other States of the Union in which such swamp and overflowed lands, known and designated as aforesaid, may be situated.

Approved, September 28, 1850.

No. 183.—An Act granting bounty land to certain officers and soldiers who have been engaged in the military service of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That each of the surviving, or the widow or minor children of deceased commissioned and non-commissioned officers, musicians or privates, whether of regulars, volunteers, rangers, or militia, who performed military service in any regiment, company or detachment in the service of the United States, in the war with Great Britain, declared by the United States on the eighteenth day of June, eighteen hundred and twelve, or in any of the Indian wars since seventeen hundred and ninety, and each of the commissioned officers who was engaged in the military service of the United States, in the late war with Mexico, shall be entitled to lands, as follows:* Those who engaged to serve twelve months or during the war, and actually served nine months shall receive one hundred and sixty acres, and those who engaged to serve six months, and actually served four months shall receive eighty acres, and those who engaged to serve for any or an indefinite period, and actually served one month shall receive forty acres, *Provided*, That wherever any officer or soldier was honorably discharged in consequence of disability in the service before the expiration of his period of service, he shall receive the amount to which he would have been entitled if he had served the full period for which he had engaged to serve. *Provided*, The person so having been in service shall not receive said land or any part thereof, if it shall appear by the muster rolls of his regiment or corps, that he deserted, or was dishonorably discharged from service, or if he has received, or is entitled to any military land bounty under any act of Congress heretofore passed.

SEC. 2. *And be it further enacted*, That the period during which any officer or soldier may have remained in captivity with the enemy shall be estimated and added to the period of his actual service, and the person so detained in captivity shall receive land under the provisions of this act in the same manner that he would be entitled in case he had entered the service for the whole term made up by the addition of the time of his captivity and had served during such time.

SEC. 3. *And be it further enacted*, That each commissioned and non-commissioned officer, musician or private, for whom provision is made by the first section hereof, shall receive a certificate or warrant from the Department of the Interior for the quantity of land to which he may be entitled, and which may be located by the warrantee or his heirs at law, at any land office of the United States in one body and in conformity to

* See Nos. 190, 282.

the legal subdivisions of the public lands, upon any of the public lands in such district then subject to private entry; and upon the return of such certificate or warrant with evidence of the location thereof having been legally made to the General Land Office, a patent shall be issued therefor. In the event of the death of any commissioned or non-commissioned officer, musician or private, prior or subsequent to the passage of this act, who shall have served as aforesaid, and who shall not have received bounty land for said services, a like certificate or warrant shall be issued in favor, and enure to the benefit of his widow, who shall receive one hundred and sixty acres of land in case her husband was killed in battle, but not to her heirs, *Provided*, She is unmarried at the date of her application. *Provided further*, That no land warrant issued under the provisions of this act shall be laid upon any land of the United States to which there shall be a pre-emption right, or upon which there shall be an actual settlement and cultivation, except with the consent of such settler, to be satisfactorily proven to the proper land officer.

SEC. 4. *And be it further enacted*, That all sales, mortgages, letters of attorney or other instruments of writing, going to affect the title or claim to any warrant or certificate issued, or to be issued, or any land granted, or to be granted, under the provisions of this act, made or executed prior to the issue, shall be null and void to all intents and purposes whatsoever; nor shall such certificate or warrant, or the land obtained thereby, be in anywise affected by, or charged with, or subject to, the payment of any debt or claim incurred by such officer or soldier, prior to the issuing of the patent: *Provided*, That the benefits of this act shall not accrue to any person who is a member of the present Congress. *Provided further*, That it shall be the duty of the Commissioner of the General Land Office under such regulations as may be prescribed by the Secretary of the Interior, to cause to be located free of expense, any warrant which the holder may transmit to the General Land Office for that purpose in such State and land district as the said holder or warrantee may designate, and upon good farming land so far as the same can be ascertained from the maps, plats, and field-notes of the surveyor, or from any other information in the possession of the local office, and upon the location being made as aforesaid, the Secretary shall cause a patent to be transmitted to such warrantee: *And provided further*, That no patent issued under this act shall be delivered upon any power of attorney or agreement dated before the passage of this act, and that all such powers of attorney or agreements be considered and treated as null and void.*

Approved, September 28, 1850.

No. 184.—An Act to grant the right of pre-emption to certain purchasers and settlers on the "Maison Rouge Grant," in the event of the final adjudication of the title in favor of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in the event of a final adjudication by the court in favor of the United States, on the "Maison Rouge Grant," under the act of Congress, approved seventeenth June, eighteen hundred and forty-four, entitled "An Act to provide for the ad-

* Repealed. See No. 254.

justment of land claims within the States of Missouri, Arkansas, and Louisiana, and in those parts of the States of Mississippi and Alabama south of the thirty-first degree of north latitude, and between the Mississippi and Perdido Rivers," every person, his heirs, or legal representatives, who, prior to the first March, eighteen hundred and forty-nine, purchased land in good faith, and for a valuable consideration, from Daniel W. Coxe, or other persons holding titles derived under the said Maison Rouge Grant, on the Ouachita River, in the State of Louisiana, and who has improved and cultivated the land so purchased, or any part of it, shall be, and he is hereby, authorized to enter, with the register of the land office for the district in which said land may be, as nearly as practicable by legal subdivisions, the whole or any portion of the tract or tracts so purchased, to include the residence and improvement, upon paying to the United States the minimum price of public lands.

SEC. 2. *And be it further enacted*, That in the event of such final adjudication, it shall be the duty of the register of the proper district to publish a notice of the fact in some newspaper circulating in the vicinity of the land, with a declaration of the readiness of the land office to receive pre-emption applications under this act, and thereupon every person claiming a right of pre-emption under this act shall be allowed twelve months within which to enter and pay for the land so claimed, from and after the date of the first public advertisement, and in conformity with such instructions as may be given by the commissioner of the general land office: *Provided*, That notice specifying the particular tracts so claimed, shall be given within three months after such first advertisement, to the register, of the intention of the claimant to make such purchase of the United States, and that no sale or entry shall be permitted to land within the limits of the aforesaid Maison Rouge claim until the expiration of the aforesaid three months, and the lands embraced in the aforesaid notices or pre-emption applications shall not be liable to sale to other persons as public lands, unless, after the expiration of the aforesaid term of twelve months, it shall be found that no pre-emption under this act shall have been established to the same.

SEC. 3. *And be it further enacted*, That if the residence and improvements of two or more persons entitled to pre-emption as aforesaid shall be found on any one of the smallest legal subdivisions of the public lands, the same may be entered jointly by the parties in order that they may secure and divide the same, according to their several rights, and in default of one or more of the parties taking the proper steps within the time prescribed to secure the benefit of this act, it shall be lawful for any one of the parties of this class to make the entry of the whole of such legal subdivision for his sole benefit.

Approved, January 27, 1851.

No. 185.—An Act to authorize the exchange of a lot on the military site of Fort Hamilton, for an equal quantity of ground adjoining said site.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of War be, and he is hereby, authorized, under the direction of the President of the United States, to cause to be exchanged a lot of ground, being part of the site of Fort Hamilton, New York, for an equal quantity of ground lying nearer to said fort, and being more valuable for military purposes.

Approved, February 14, 1851.

No. 186.—An Act to authorize the legislative assemblies of the Territories of Oregon and Minnesota to take charge of the school lands in said Territories, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the governors and legislative assemblies of the Territories of Oregon and Minnesota be, and they are hereby, authorized to make such laws and needful regulations as they shall deem most expedient to protect from injury and waste, sections numbered sixteen and thirty-six in said Territories, reserved in each township for the support of schools therein.

SEC. 2. *And be it further enacted,* That the Secretary of the Interior be, and he is hereby, authorized and directed to set apart and reserve from sale, out of any of the public lands within the Territory of Minnesota to which the Indian title has been or may be extinguished, and not otherwise appropriated, a quantity of land not exceeding two entire townships, for the use and support of a University in said Territory, and for no other use or purpose whatsoever, to be located by legal subdivisions of not less than one entire section.

Approved, February 19, 1851.

No. 187.—An Act for the settlement of certain classes of "Private Land Claims" within the limits of the "Baron De Bastrop Grant," and for allowing pre-emptions to certain actual settlers, in the event of the final adjudication of the title of the said De Bastrop in favor of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in the event of a final adjudication by the court in favor of the United States, on the "Baron De Bastrop" claim in Louisiana, under the act of Congress, approved on the seventeenth June, one thousand eight hundred and forty-four, entitled "An act to provide for the adjustment of land claims within the States of Missouri, Arkansas, and Louisiana, and in those parts of the States of Mississippi and Alabama south of the thirty-first degree of north latitude, and between the Mississippi and Perdido rivers," the register and receiver for the Ouachita Land District, Louisiana, shall give public notice of the fact in some newspaper circulating in the vicinity of the land, and within twelve months from and after the date of the first publication of such notice, it shall and may be lawful for any original claimants of the classes hereinafter mentioned in this section of the present act, their heirs or legal representatives, to file with the aforesaid register and receiver notices descriptive of their claims, and specifying their precise localities and area, with the testimony in support of the same.

First. All bona fide claimants by purchase from De Bastrop, or those holding under him, where the land has been occupied and cultivated for twenty years.

Second. All bona fide claimants of "head rights," for not exceeding six hundred and forty acres, their heirs or legal representatives, where the original claimant came over and settled the land under the contract between the Spanish government and De Bastrop, even though the land was not actually sold or conveyed to such original claimants by the said De Bastrop.

Third. All bona fide claimants for not exceeding six hundred and forty acres, as actual settlers prior to the twentieth December, eighteen hundred and three, where they have held such continued possession as to show that they identified themselves with the ownership of the land.

SEC. 2. *And be it further enacted*, That after the expiration of the twelve months aforesaid, it shall be the duty of the register and receiver, pursuant to such instructions as may be given by the commissioner of the general land office, to make a report with the notices, and all the testimony, to the general land office, specifying all such cases as in their opinion came within the principles recognized under the several heads mentioned in the foregoing section, and which according to those principles ought to be confirmed, and such as in their opinion ought to be rejected.

SEC. 3. *And be it further enacted*, That it shall be the duty of the commissioner of the general land office to lay the report aforesaid before Congress for final action thereon, and all claims recommended for confirmation shall be reserved from sale until the final action of Congress on the report aforesaid, and all claims reported as rejected shall be treated as other public lands.

SEC. 4. *And be it further enacted*, That the claims numbers forty, forty-four, forty-five, forty-six, forty-seven, forty-eight, and fifty-one, favorably reported on by Daniel J. Sutton, as register for the district north of Red River, Louisiana, and entered in the first class of his report, dated first January, eighteen hundred and twenty-one, but on account of being within the limits of the Bastrop grant, have been excluded from the confirmatory provisions of the second section of the act of Congress, approved February twenty-eight, eighteen hundred and twenty-three, entitled "An act supplementary to the several acts for the adjustment of land claims in the State of Louisiana," be, and the same shall be held confirmed, in the event of the final adjudication of the Bastrop claim in favor of the United States as aforesaid: *Provided*, That this confirmation shall only operate as a relinquishment of title on the part of the United States, and shall in no way prejudice or affect any sale, or other right existing at the time when the survey shall be executed, of the claims hereby conditionally confirmed; and in the event of the final adjudication of the Bastrop grant as aforesaid, and upon the return of approved plats of survey for the claims specified in this section, relinquishment patents shall be issued as in other cases.

SEC. 5. *And be it further enacted*, That in the event of a final adjudication, in favor of the United States, of the Bastrop claim, as contemplated by the first section of this act, every bona fide settler on any part of said land, at the time of the extension of the public surveys over the same, who is a man of family, widow, or single man over twenty-one years of age, and an actual housekeeper thereon, and who, but for the reservation heretofore made of said land for the claim of the said Bastrop, would have been entitled to a right of pre-emption under some one of the pre-emption laws, be, and he is hereby authorized to enter the quarter section so resided on, or by adjoining legal subdivisions, so as to include his residence and land cultivated or improved, any number of acres not to exceed one hundred and sixty acres, upon making proof of such settlement, housekeeping, &c., to the satisfaction of the register and receiver, as in ordinary cases, at any time within a year after the public surveys are so extended over said land.

Approved, March 3, 1851.

No. 188.—An Act making appropriations for the civil and diplomatic expenses of government for the year ending the thirtieth of June, eighteen hundred and fifty-two, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums be, and are hereby, appropriated, out of any money in the treasury not otherwise appropriated, for the objects hereafter expressed, for the fiscal year ending the thirtieth of June, eighteen hundred and fifty-two namely:—

* * * * *

Surveys of Public Lands.—For surveying the public lands, in addition to the unexpended balance of former appropriations, viz : For surveying the public lands, including incidental expenses, to be apportioned to the several districts according to the exigencies of the public service, the part to be applied to the surveys required by the location and survey of private claims in Florida, to be disbursed at augmented rates, one hundred and fifteen thousand dollars : *Provided,* That no land bounty for military services granted by the act of twenty-eighth of September, eighteen hundred and fifty, entitled “An Act granting bounty land to certain officers and soldiers who have engaged in the military service of the United States,” or by virtue of any other act of Congress heretofore passed, granting land bounties for military services, shall be satisfied out of any public land not heretofore brought into market, and now subject to entry at private sale under existing laws.

* * * * *

Approved, March 3, 1851.

No. 189.—An Act to ascertain and settle the private land claims in the State of California.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of ascertaining and settling private land claims in the State of California, a commission shall be, and is hereby, constituted, which shall consist of three commissioners, to be appointed by the President of the United States, by and with the advice and consent of the Senate, which commission shall continue for three years from the date of this act, unless sooner discontinued by the President of the United States.

SEC. 2. *And be it further enacted,* That a secretary, skilled in the Spanish and English languages, shall be appointed by the said commissioners, whose duty it shall be to act as interpreter, and to keep a record of the proceedings of the board in a bound book, to be filed in the office of the Secretary of the Interior on the termination of the commission.

SEC. 3. *And be it further enacted,* That such clerks, not to exceed five in number, as may be necessary, shall be appointed by the said commissioners.

SEC. 4. *And be it further enacted,* That it shall be lawful for the President of the United States to appoint an agent learned in the law, and skilled in the Spanish and English languages, whose special duty it shall be to superintend the interests of the United States in the premises, to

* See Nos. 232, 273, 326.

continue him in such agency as long as the public interest may, in the judgment of the President, require his continuance, and to allow him such compensation as the President shall deem reasonable. It shall be the duty of the said agent to attend the meetings of the board, to collect testimony in behalf of the United States, and to attend on all occasions when the claimant, in any case before the board, shall take depositions; and no deposition taken by or in behalf of any such claimant shall be read in evidence in any case, whether before the commissioners, or before the District or Supreme Court of the United States, unless notice of the time and place of taking the same shall have been given in writing to said agent, or to the district attorney of the proper district, so long before the time of taking the deposition as to enable him to be present at the time and place of taking the same, and like notice shall be given of the time and place of taking any deposition on the part of the United States.

SEC. 5. *And be it further enacted*, That the said commissioners shall hold their sessions at such times and places as the President of the United States shall direct, of which they shall give due and public notice; and the marshal of the district in which the board is sitting shall appoint a deputy, whose duty it shall be to attend upon the said board, and who shall receive the same compensation as is allowed to the marshal for his attendance upon the District Court.

SEC. 6. *And be it further enacted*, That the said commissioners, when sitting as a board, and each commissioner at his chambers, shall be, and are, and is hereby, authorized to administer oaths, and to examine witnesses in any case pending before the commissioners, that all such testimony shall be taken in writing, and shall be recorded and preserved in bound books to be provided for that purpose.

SEC. 7. *And be it further enacted*, That the secretary of the board shall be, and he is hereby, authorized and required, on the application of the law agent or district attorney of the United States, or of any claimant or his counsel, to issue writs of subpoena commanding the attendance of a witness or witnesses before the said board or any commissioner.

SEC. 8. *And be it further enacted*, That each and every person claiming lands in California by virtue of any right or title derived from the Spanish or Mexican government, shall present the same to the said commissioners when sitting as a board, together with such documentary evidence and testimony of witnesses as the said claimant relies upon in support of such claims; and it shall be the duty of the commissioners, when the case is ready for hearing, to proceed promptly to examine the same upon such evidence, and upon the evidence produced in behalf of the United States, and to decide upon the validity of the said claim, and, within thirty days after such decision is rendered, to certify the same, with the reasons on which it is founded, to the district attorney of the United States in and for the district in which such decision shall be rendered.

SEC. 9. *And be it further enacted*, That in all cases of the rejection or confirmation of any claim by the board of commissioners, it shall and may be lawful for the claimant or the district attorney, in behalf of the United States, to present a petition to the District Court of the district in which the land claimed is situated, praying the said court to review the decision of the said commissioners, and to decide on the validity of such claim; and such petition, if presented by the claimant, shall set forth fully the nature of the claim and the names of the original and present claimants, and shall contain a derangement of the claimant's title, together with a transcript of the report of the board of commissioners, and of the documentary evidence and testimony of the witnesses on which it was founded; and such petition,

if presented by the district attorney in behalf of the United States, shall be accompanied by a transcript of the report of the board of commissioners, and of the papers and evidence on which it was founded, and shall fully and distinctly set forth the grounds on which the said claim is alleged to be invalid, a copy of which petition, if the same shall be presented by a claimant, shall be served on the district attorney of the United States, and, if presented in behalf of the United States, shall be served on the claimant or his attorney; and the party upon whom such service shall be made shall be bound to answer the same within a time to be prescribed by the judge of the District Court; and the answer of the claimant to such petition shall set forth fully the nature of the claim, and the names of the original and present claimants, and shall contain a derangement of the claimant's title; and the answer of the district attorney in behalf of the United States shall fully and distinctly set forth the grounds on which the said claim is alleged to be invalid, copies of which answers shall be served upon the adverse party thirty days before the meeting of the court, and thereupon, at the first term of the court thereafter, the said case shall stand for trial, unless, on cause shown, the same shall be continued by the court.

SEC. 10. *And be it further enacted*, That the District Court shall proceed to render judgment upon the pleadings and evidence in the case, and upon such further evidence as may be taken by order of the said court, and shall, on application of the party against whom judgment is rendered, grant an appeal to the Supreme Court of the United States, on such security for costs in the District and Supreme Court, in case the judgment of the District Court shall be affirmed, as the said court shall prescribe; and if the court shall be satisfied that the party desiring to appeal is unable to give such security, the appeal may be allowed without security.

SEC. 11. *And be it further enacted*, That the commissioners herein-provided for, and the District and Supreme Courts, in deciding on the validity of any claim brought before them under the provisions of this act, shall be governed by the treaty of Guadalupe Hidalgo, the law of nations, the laws, usages, and customs of the government from which the claim is derived, the principles of equity, and the decisions of the Supreme Court of the United States, so far as they are applicable.

SEC. 12. *And be it further enacted*, That to entitle either party to a review of the proceedings and decision of the commissioners hereinbefore provided for, notice of the intention of such party to file a petition to the District Court shall be entered on the journal or record of proceedings of the commissioners within sixty days after their decision on the claim has been made and notified to the parties, and such petition shall be filed in the District Court within six months after such decision has been rendered.

SEC. 13. *And be it further enacted*, That all lands, the claims to which have been finally rejected by the commissioners in manner herein provided, or which shall be finally decided to be invalid by the District or Supreme Court, and all lands the claims to which shall not have been presented to the said commissioners within two years after the date of this act, shall be deemed, held, and considered as part of the public domain of the United States; and for all claims finally confirmed by the said commissioners, or by the said District or Supreme Court, a patent shall issue to the claimant upon his presenting to the general land office an authentic certificate of such confirmation, and a plat or survey of the said land, duly certified and approved by the surveyor-general of California, whose duty it shall be to cause all private claims which shall be finally confirmed to be accurately surveyed, and to furnish plats of the same; and in the location of the said

claims, the said surveyor-general shall have the same power and authority as are conferred on the register of the land office and receiver of the public moneys of Louisiana, by the sixth section of the act "to create the office of surveyor of the public lands for the State of Louisiana," approved third March, one thousand eight hundred and thirty-one: *Provided always*, That if the title of the claimant to such lands shall be contested by any other person; it shall and may be lawful for such person to present a petition to the district judge of the United States for the district in which the lands are situated, plainly and distinctly setting forth his title thereto, and praying the said judge to hear and determine the same, a copy of which petition shall be served upon the adverse party thirty days before the time appointed for hearing the same. *And provided further*, That it shall and may be lawful for the district judge of the United States, upon the hearing of such petition, to grant an injunction to restrain the party at whose instance the claim to the said lands has been confirmed, from suing out a patent for the same, until the title thereto shall have been finally decided, a copy of which order shall be transmitted to the commissioner of the general land office, and thereupon no patent shall issue until such decision shall be made, or until sufficient time shall, in the opinion of the said judge, have been allowed for obtaining the same; and thereafter the said injunction shall be dissolved.

SEC. 14. *And be it further enacted*, That the provisions of this act shall not extend to any town lot, farm lot, or pasture lot, held under a grant from any corporation or town to which lands may have been granted for the establishment of a town by the Spanish or Mexican government, or the lawful authorities thereof, nor to any city, or town, or village lot, which city, town, or village existed on the seventh day of July, eighteen hundred and forty-six; but the claim for the same shall be presented by the corporate authorities of the said town, or where the land on which the said city, town, or village was originally granted to an individual, the claim shall be presented by or in the name of such individual, and the fact of the existence of the said city, town, or village on the said seventh July, eighteen hundred and forty-six, being duly proved, shall be prima facie evidence of a grant to such corporation, or to the individual under whom the said lot-holders claim; and where any city, town, or village shall be in existence at the time of passing this act, the claim for the land embraced within the limits of the same may be made by the corporate authority of the said city, town, or village.

SEC. 15. *And be it further enacted*, That the final decrees rendered by the said commissioners, or by the District or Supreme Court of the United States, or any patent to be issued under this act, shall be conclusive between the United States and the said claimants only, and shall not affect the interests of third persons.

SEC. 16. *And be it further enacted*, That it shall be the duty of the commissioners herein provided for to ascertain and report to the Secretary of the Interior the tenure by which the mission lands are held, and those held by civilized Indians, and those who are engaged in agriculture or labor of any kind, and also those which are occupied and cultivated by Pueblos or Rancheros Indians.

SEC. 17. *And be it further enacted*, That each commissioner appointed under this act shall be allowed and paid at the rate of six thousand dollars per annum; that the secretary of the commissioners shall be allowed and paid at the rate of four thousand dollars per annum; and the clerks herein provided for shall be allowed and paid at the rate of one thousand five hundred dollars per annum; the aforesaid salaries to commence from the

day of the notification by the commissioners of the first meeting of the board.

SEC. 18. *And be it further enacted*, That the secretary of the board shall receive no fee except for furnishing certified copies of any paper or record, and for issuing writs of subpœna. For furnishing certified copies of any paper or record, he shall receive twenty cents for every hundred words, and for issuing writs of subpœna, fifty cents for each witness; which fees shall be equally divided between the said secretary and the assistant clerk.

Approved, March 3, 1851.

No. 190.—An Act to make land warrants assignable, and for other purposes.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all warrants for military bounty lands which have been or may hereafter be issued under any law of the United States, and all valid locations of the same which have been or may hereafter be made, are hereby declared to be assignable, by deed or instrument of writing made and executed after the taking effect of this act according to such form, and pursuant to such regulations as may be prescribed by the Commissioner of the General Land Office, so as to vest the assignee with all the rights of the original owner of the warrant or location: *Provided*, That any person entitled to pre-emption right to any land shall be entitled to use any such land warrant in payment for the same at the rate of one dollar and twenty-five cents per acre, for the quantity of land therein specified: *Provided*, That the warrants which have been, or may hereafter be issued in pursuance of said laws or of this act may be located according to the legal subdivisions of the public lands in one body upon any lands of the United States, subject to private entry at the time of such location, at the minimum price. *Provided further*, That when said warrant shall be located on lands which are subject to entry at a greater minimum than one dollar and twenty-five cents per acre, the locator of said warrants shall pay to the United States in cash the difference between the value of such warrants at one dollar and twenty-five cents per acre and the tract of land located on.

SEC. 2. *And be it further enacted*, That the registers and receivers of the land-offices shall hereafter be severally authorized to charge and receive for their services in locating all military bounty land warrants issued since the eleventh day of February, eighteen hundred and forty-seven, the same compensation or percentage to which they are entitled by law for sales of the public lands for cash, at the rate of one dollar and twenty-five cents per acre, the said compensation to be hereafter paid by the assignees or holders of such warrants.

SEC. 3. *And be it further enacted*, That registers and receivers, whether in or out of office at the passage of this act, or their legal representatives in case of death, shall be entitled to receive from the treasury of the United States, for services heretofore performed in locating military bounty land warrants, the same rate of compensation provided in the preceding section for services hereafter to be performed, after deducting the amount already received by such officers under the act entitled "An act to require the holders of military land warrants to compensate the land-officers of the United States for services in relation to the location of those warrants,"†

* See No. 335.

† See No. 137.

approved May seventeenth, eighteen hundred and forty-eight: *Provided*, That no register or receiver shall receive any compensation out of the treasury, for past services, who has charged and received illegal fees for the location of such warrants; *And provided further*, That no register or receiver shall receive for his services during any year a greater compensation than the maximum now allowed by law.*

SEC. 4. *And be it further enacted*, That in all cases where the militia or volunteers, or State troops of any State or Territory were called into military service, and whose services have been paid by the United States subsequent to the eighteenth June, eighteen hundred and twelve, the officers and soldiers of such militia, volunteers or troops shall be entitled to all the benefits of the act entitled "An act granting bounty land to certain officers and soldiers who have been engaged in the military service of the United States,"* approved September twenty-eighth, eighteen hundred and fifty, and shall receive lands for their services according to the provisions of said act, upon proof of length of service as therein required, and that the last proviso of the ninth section of the act of the eleventh of February, eighteen hundred and forty-seven, be, and the same is hereby repealed: *Provided*, That nothing herein contained shall authorize bounty land to those who have heretofore received or become entitled to the same.†

SEC. 5. *And be it further enacted*, That where any company, battalion or regiment, in an organized form, marched more than twenty miles to the place where they were mustered into the service of the United States, or were discharged more than twenty miles from the place where such company, battalion or regiment was organized; in all such cases, in computing the length of service of the officers and soldiers of any such company, battalion or regiment, with a view to determine the quantity of land any officer or soldier is entitled to under said act, approved twenty-eighth September, eighteen hundred and fifty, there shall be allowed one day for every twenty miles from the place where the company, battalion or regiment was organized, to the place where the same was mustered into the service of the United States: and also one day for every twenty miles from the place where such company, battalion or regiment was discharged, to the place where it was organized, and from whence it marched to enter the service.

Approved, March 22, 1852.

No. 191.—An Act to extend the time for selecting lands granted to the State of Wisconsin for saline purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the time for selecting lands for saline purposes, granted to the State of Wisconsin by virtue of the fourth subdivision of the seventh section of an act entitled "An act to enable the people of Wisconsin Territory to form a constitution and State government, and for the admission of such State into the Union," approved the sixth day of August, in the year eighteen hundred and forty-six, be, and the same is hereby extended to the first day of January, in the year eighteen hundred and fifty-four; and the land so selected previous to the day last mentioned, shall be granted to said State for the same purposes,

* See Nos. 183, 282.

† See No. 126.

on the same conditions, and with like effect, as if the same had been selected and confirmed within the time limited by the act above mentioned.*

Approved, May 4, 1852.

No. 192.—An Act to authorize the Legislature of the State of Mississippi to sell the lands heretofore appropriated for the use of schools in that State, and to ratify and approve the sales already made.†

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Legislature of the State of Mississippi shall be, and is hereby authorized to sell and convey in fee-simple, or lease, for a term of years, as the said legislature may deem best, all or any part of the lands heretofore reserved and appropriated by Congress for the use of schools within said State, and to invest the money arising from said sales, as said legislature may direct, for the use and support of schools within the several townships and districts of country for which they were originally reserved and set apart, and for no other use, or purpose whatsoever: Provided, Said lands or any part thereof, shall, in no case be sold or leased without the consent of the inhabitants of such township or district, to be obtained in such manner as the legislature of said State may by law direct: And provided further, That in all cases, the money arising from the sales of lands within a particular township and district, shall be appropriated to the use of schools within that township and district.

SEC. 2. *And be it further enacted, That sales heretofore made by the authority of the Legislature of the State of Mississippi of lands reserved and appropriated as aforesaid, are hereby ratified and approved in the same manner and to the same extent, as if this act had been in force at the time of said sales.*

Approved, May 19, 1852.

No. 193.—An Act to legalize certain entries of public land made in the State of Florida.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the several entries of land, (embracing tracts once reserved to satisfy claims under the armed occupation act, but which claims were forfeited prior to the allowance of said entries,) permitted at the Land Office at Newnansville, in the State of Florida, be, and the same are hereby confirmed, and patent shall issue thereon as in other cases: Provided, That the land so entered shall have been, upon the faith of the register's certificate, improved by the party in interest under said certificate, and that the said land is not claimed by adverse parties.

Approved, May 26, 1852.

* See No. 113. Salt lands relinquished to State. See No. 259.

† See No. 317.

No. 194.—An Act to relinquish to the State of Iowa the lands reserved for salt springs therein.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the twelve salt springs, and six sections of land adjoining or contiguous thereto, the use of which was granted to the State of Iowa, by the act entitled "An act supplemental to the act for the admission of the States of Iowa and Florida into the Union," approved March third, eighteen hundred and forty-five, shall be, and the same are hereby granted in fee-simple, to the said State of Iowa, to be disposed of, and the proceeds to be applied as the legislature of that State shall direct: *Provided,* That nothing in this act contained shall be so construed as to interfere with the rights of third parties: *And provided further,* That if any of the lands which have been selected by the authorities of the State of Iowa, under the act aforesaid, shall have been legally claimed by pre-emption or otherwise, the State shall be authorized to select other lands in lieu thereof.

Approved, May 27, 1852.

No. 195.—An Act to grant to certain settlers on the Menomonee purchase, north of Fox river, in the State of Wisconsin, the right of pre-emption.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That every person being the head of a family, widow, or single man over the age of twenty-one years, who, on the first day of June, eighteen hundred and fifty-two, shall be an actual settler and housekeeper, and have made other improvements, on any tract within the body of lands ceded to the United States by the treaty of eighteenth October, eighteen hundred and forty-eight, with the Menomonee tribe of Indians, is hereby entitled to the same right of pre-emption, and upon the same terms and conditions as is prescribed by the act entitled "An act to appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights," approved fourth September, eighteen hundred and forty-one: *Provided,* That where there shall be more than one such settler on any quarter section, fractional quarter section, or fraction of a section less than one hundred and sixty acres, the rights of such settlers, as to the land settled on, shall be the same as those prescribed by the eighth section of the act entitled "An act to authorize the investigation of certain alleged frauds under the pre-emption laws, and for other purposes," approved third March, eighteen hundred and forty-three, for settlers therein provided for: *And provided further,* That the pre-emption rights provided for in this act shall attach only to such land as shall become subject to sale at the minimum price of one dollar and twenty-five cents an acre.

Approved, May 27, 1852.

No. 196.—An Act granting the right of way to the State of Missouri, and a portion of the public lands, to aid in the construction of certain railroads in said State.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the right of way through the public lands be, and the same is hereby granted to the State of Missouri, for the construction of railroads from the town of Hannibal to the town of St. Joseph, in said State, and from the city of St. Louis to such point on the western boundary of said State as may be designated by the authority of said State, with the right also to take necessary materials of earth, stone, and timber for the construction thereof, from the public lands of the United States adjacent to said railroads: *Provided,* That in locating the railroads aforesaid, and assigning the limits to the easement, no more land shall be taken from the United States than is necessary for a convenient construction and use of said roads as public ways for transportation, including stations, with the usual buildings of all kinds, turnouts and such other appurtenances as are usually enjoyed by railroad companies, and a copy of the location of said roads, made under the direction of the Legislature, shall be forwarded to the proper local land offices respectively, and to the General Land Office at Washington City, within ninety days after the completion of the same, to be recorded.

SEC. 2. *And be it further enacted,* That there be, and is hereby granted to the State of Missouri, for the purpose of aiding in making the railroads aforesaid, every alternate section of land designated by even numbers, for six sections in width on each side of said road; but in case it shall appear that the United States have, when the line or route of said roads, or either of them, shall be definitely fixed by the authority aforesaid, sold any section or any part thereof granted as aforesaid, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents to be appointed by the Governor of said State, to select, subject to the approval of the Secretary of the Interior, from the lands of the United States most contiguous to the tier of sections above specified, so much land in alternate sections or parts of sections as shall be equal to such lands as the United States have sold, or to which the right of pre-emption has attached as aforesaid; which lands, thus selected in lieu of those sold, and to which pre-emption rights have attached as aforesaid, together with the sections and parts of sections designated by even numbers as aforesaid, and appropriated as aforesaid, shall be held by the State of Missouri for the use and purpose aforesaid: *Provided,* That the lands to be so located shall in no case be further than fifteen miles from the line of the road in each case: *Provided further,* That the lands hereby granted shall be exclusively applied in the construction of that road for which it was granted and selected, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatsoever: *And provided further,* That any and all lands heretofore reserved to the United States by any act of Congress, or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement, or for any other purpose whatsoever, be and the same are hereby reserved to the United States from the operation of this act, except so far as it may be found necessary to locate the route of the said railroads through such reserved lands; in which case the right of way only shall be granted.

SEC. 3. *And be it further enacted,* That the sections and parts of sections of land which, by such grant, shall remain to the United States, within six miles on each side of said roads, shall not be sold for less than double

the minimum price of the public lands when sold ; which lands shall from time to time be offered at public sale to the highest bidder, under the direction of the Secretary of the Interior, and shall not be subject to entry until they shall have been so offered at public sale.

SEC. 4. *And be it further enacted*, That the said lands hereby granted to the said State shall be subject to the disposal of the legislature thereof, for the purposes aforesaid, and no other ; and the said railroads shall be and remain public highways for the use of the government of the United States, free from toll or other charge upon the transportation of any property or troops of the United States.

SEC. 5. *And be it further enacted*, That the lands hereby granted to said State shall be disposed of by said State only in manner following, that is to say : that a quantity of land not exceeding one hundred and twenty sections on each road, and included within a continuous length of twenty miles of said road, may be sold ; and when the Governor of said State shall certify to the Secretary of the Interior, that said twenty miles of said road is completed, then another like quantity of land hereby granted may be sold ; and so from time to time, until said road is completed ; and if said road be not completed within ten years, no further sales shall be made, and the land unsold shall revert to the United States.

SEC. 6. *And be it further enacted*, That the United States mail shall at all times be transported on said railroads under the direction of the Post-Office Department, at such price as Congress may by law direct.

Approved, June 10, 1852.

No. 197.—An Act giving the assent of Congress to the State of Missouri to impose a tax or taxes upon all lands hereafter sold by the United States therein, from and after the day of such sale.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the assent of Congress is hereby given to the State of Missouri, to impose a tax or taxes upon all lands hereafter sold by the United States, in said State, from and after the day of such sale : *Provided*, That the assent hereby given shall in nowise impair that provision of the compact with the said State which declares that all lands belonging to citizens of the United States residing without the said State shall never be taxed higher than lands belonging to persons residing therein.

Approved, June 10, 1852.

No. 198.—An Act to supply a deficiency to the State of Indiana in a township of land granted to said State for the use of a state university, by an Act of Congress approved nineteenth of April, eighteen hundred and sixteen.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be supplied to the State of Indiana, for the sole and exclusive use of the State University, an equal number of acres of land found to be deficient in the original grant, and which has been otherwise appropriated by Congress, amounting to four

thousand one hundred and sixty-six acres, and that said lands be selected, under the direction of the governor of the State, from any lands now in market in said State belonging to the United States, the proceeds of which shall be appropriated solely to the use of said State University, and shall never be diverted to any other purpose whatever.

Approved, July 12, 1852.

No. 199.—An Act to release from reservation, and restore to the mass of public lands, certain lands in the State of Arkansas.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the several tracts of land in the State of Arkansas, heretofore reserved for the satisfaction of military bounties under the war of eighteen hundred twelve, and which now remain undisposed of, be, and they are hereby released from such reservation, and restored to the mass of public lands, to be disposed of in the same manner as any other unoffered public land: *Provided,* That the person who may, at the date of this act, be an actual settler on any one of said tracts, and who, but for the reservation thereof, might have claimed the right of pre-emption thereto, under act of fourth September, eighteen hundred forty-one, be, and is hereby authorized to enter the same, or any subdivision thereof, upon making proof of said right, and paying the minimum price per acre, within a year after the passage of this act, or prior to the day fixed for the public sale of the tract.*

SEC. 2. *And be it further enacted,* That all sales of said land, or location thereof by military warrants, (other than those of the war of eighteen hundred and twelve,) which have been inadvertently permitted to be made, and which are in all other respects fair and regular, except as embracing reserved land not offered at public sale, be, and the same are hereby confirmed, and patents thereon which have been issued shall be as legal and valid as if said lands had been released from reservation, and offered at public sale prior to such sales or locations.

SEC. 3. *And be it further enacted,* That all of said warrants which have not been satisfied, may be located on any of the public lands subject to private entry at the time of the location of the same.

Approved, July 12, 1852.

No. 200.—An Act to amend an act entitled "An act providing for the sale of certain lands in the States of Ohio and Michigan, ceded by the Wyandott Tribe of Indians, and for other purposes," approved on the third day of March, eighteen hundred and forty-three.†

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of the fifth section of the act of which this is amendatory, as declares that if, in offering at public sale any tract of land ceded by the Wyandotts under the treaty concluded with that tribe on the seventeenth March, eighteen hundred forty-

* See No. 47.

† See No. 74.

two, on which improvements exist, the real value of the same, according to the estimates of the superintendents, shall not be bidden, it shall be their duty to withdraw the tract from sale, and the tracts thus withdrawn from sale shall [again] be offered at public sale, due public notice first being given, be, and the same is hereby repealed; and all such lands shall be exposed at public sale to the highest bidder, at such time and place as the Commissioner of the General Land Office may direct, subject to the minimum price per acre of two dollars and fifty cents.

Approved, July 12, 1852.

No. 201.—An Act to enable the Legislature of the State of Indiana to dispose of the unsold saline lands in said State.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of the act of Congress entitled "An act to authorize the Legislature of the State of Indiana to sell and convey certain lands granted to said State for the use of the people thereof," approved July third, eighteen hundred and thirty-two, as provides that said lands shall not be sold for a less price than [that] at which the public lands are sold, be, and the same is hereby repealed.

Approved, July 12, 1852.

No. 202.—An Act to authorize the Mayor and Common Council of Chicago, Illinois, to excavate a portion of the public reservation at that place, with a view to the improvement of the navigation of Chicago river.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the corporate authorities of the city of Chicago, Illinois, be, and they are hereby authorized to excavate such portion of the reservation at Chicago, not exceeding the limits described in their memorial of January five, eighteen hundred and fifty-two, as may be necessary, according to the plan set forth in said memorial, for the improvement of the navigation of the Chicago River.

SEC. 2. *And be it further enacted,* That the Secretary of War, be, and he is hereby directed to cause the limits above designated to be marked out, and to make such disposition of the buildings now standing within said limits as may be best for the public interest.

Approved, July 21, 1852.

No. 203.—An Act to establish additional land districts in the State of Wisconsin.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of the public lands of the United States, in the State of Wisconsin, as lies within the following boundaries, to wit:—commencing at the southwest corner of township fifteen, north of range two, east of the fourth principal meridian, thence

running due east to the southeast corner of township fifteen, north of range eleven, east of the fourth principal meridian, thence north along said range line to the north line of the State of Wisconsin, thence westerly along said north line to the line between ranges one and two, east of the fourth principal meridian, thence south to the place of beginning, shall be formed into a new land district, to be called the Stevens Point Land District, and for the sale of the public lands within the district hereby constituted, a land office shall be established at Stevens Point, on the Wisconsin River, as soon as the public convenience may require it.

SEC. 2. *And be it further enacted*, That so much of the public lands of the United States, in the State of Wisconsin, as lies within the following boundaries, to wit:—commencing at a point where the line between townships ten and eleven, north, touches the Mississippi River, thence due east to the fourth principal meridian, thence north to the line between townships fourteen and fifteen, north, thence east to the southeast corner of township fifteen, north of range one, east of the fourth principal meridian, thence north on the range line to the south line of township number thirty-one, north, thence west on the line between townships number thirty and thirty-one, to the Chippewa River, thence down said river to its junction with the Mississippi River, thence down the Mississippi River to the place of beginning, shall be formed into a new land district, to be called the La Crosse Land District, and for the sale of the public lands within the district hereby constituted, a land office shall be established at La Crosse on the Mississippi River, as soon as the public convenience may require it.

SEC. 3. *And be it further enacted*, That the President is hereby authorized to cause the removal of either of the offices created by this act, to any other place within said district, whenever, in his opinion, such removal may be deemed expedient.

SEC. 4. *And be it further enacted*, That the President be, and he is hereby authorized to appoint, by and with the advice and consent of the Senate, a register and a receiver of public moneys for each of the said districts, who shall respectively be required to reside at the site of said office, and who shall have the same powers, perform the same duties, and be entitled to the same compensation as are or may be prescribed by law in relation to other land-officers of the United States. And in case it shall be found necessary or expedient to establish said districts, or either of them, during the recess of Congress, the President shall be, and he is hereby authorized to appoint the necessary officers during such recess, and until the end of the next session of Congress: *Provided however*, That this act shall not go into effect until at least six month after its passage.

SEC. 5. *And be it further enacted*, That the Commissioner of the General Land Office shall cause to be transferred to the land-offices hereby created, all such books, maps, records, field notes, and plats, or transcripts thereof, relating to the surveys and entries of the public lands in the districts hereby created, as may be necessary for the sale of the public lands, in compliance with the provisions of this act.

Approved, July 30, 1852.

No. 204.—An Act to create three additional land districts in the State of Iowa.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all that portion of the public

lands in the State of Iowa, lying west of the range line dividing ranges seventeen and eighteen, and east of the range line dividing ranges thirty-one and thirty-two, and now included in the district of lands subject to sale at Fairfield, shall comprise a new land district, to be called the Chariton District: that so much of the public lands in said State, now included in the Iowa and Dubuque land districts, as lie between the range line dividing ranges sixteen and seventeen, and the range line dividing ranges thirty-three and thirty-four, shall form a new land district, to be called the Northern District; that all that portion of the public lands in said State, now included in the district subject to sale at Fairfield, and lying west of the range line dividing ranges thirty-one and thirty-two, and all that portion of the public lands now included in the districts subject to sale at Iowa City and Dubuque, and lying west of the range line dividing ranges thirty-three and thirty-four, shall form a new land district, to be called the Missouri River District; and that the district of lands subject to sale at Dubuque shall hereafter be bounded on the north by the northern boundary line of the State of Iowa.

SEC. 2. *And be it further enacted*, That the President be, and he is hereby authorized to appoint, by and with the advice and consent of the Senate, a register and receiver of the public moneys for each of the said districts, respectively, who shall each be required to reside at the site of the respective office to which they may be appointed, and who shall have the same powers, perform the same duties, and be entitled to the same compensation as are or may be prescribed by law in relation to other land-offices of the United States.

SEC. 3. *And be it further enacted*, That the President is authorized to cause the public lands in said districts, respectively, (with the exception of sections numbered sixteen in each township, reserved for the use of schools, or such other lands as may be selected by law in lieu thereof, and of such other tracts as he may select for military or other purposes,) to be exposed to sale in the same manner and upon the same terms and conditions as the other public lands of the United States.

SEC. 4. *And be it further enacted*, That the President is hereby authorized to designate the sites at which each of the several offices shall be established, and to remove the same to any other places within said districts respectively, whenever, in his opinion, it may be deemed expedient.

SEC. 5. *And be it further enacted*, That any location or sales of land lying in either of the districts hereby created, made by the land-officers at Dubuque, Iowa City, or Fairfield, after the passage of this act, and prior to the receipt by them of instructions from the Commissioner of the General Land Office under this act, shall be as good and valid in law as if this act had not been passed.

Approved, August 2, 1852.

No. 205.—An Act to protect actual settlers upon the land on the line of the Central Railroad and branches, by granting pre-emption rights thereto.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That each and every person now an actual settler and occupant, and who, on the twentieth day of Sep-

* See No. 178.

tember, in the year of our Lord one thousand eight hundred and fifty, had made such an actual settlement and improvement as would have entitled him to a right of pre-emption under the act of September fourth, eighteen hundred and forty-one, but for his failure to give the requisite notice under that law, or to file proof within due time, on any tract of land now owned by the United States, and situated within the limits reserved from sale by order of the Government, because of the grant of alternate sections to the States of Illinois, Mississippi, and Alabama, in aid of the construction of the Chicago and Mobile railroad and branches, by virtue of an act of Congress, approved September twentieth, eighteen hundred and fifty, entitled, "An act granting the right of way and making a grant of land to the States of Illinois, Mississippi, and Alabama, in aid of the construction of a railroad from Chicago to Mobile," shall have the right to purchase, at the price established by law in regulating the sales of said lands, a quantity of the tract so settled on and improved, not less than forty nor more than one hundred and sixty acres, in legal subdivisions, on which said improvements may be situated: *Provided*, That any person claiming the right to purchase under this act shall, before the actual offering of the tract at public sale, file with the register of the proper land-office, a notice describing the land by its numbers, and make the necessary proof, affidavit, and payment for the land, within twelve months from the date of this act: *And provided further*, That the right of way upon and across any tract of land claimed under the provisions of this act, not exceeding two hundred feet in width, shall be reserved and retained for the said railroad and branches, as the same may be located and constructed.

Approved, August 2, 1852.

No. 206.—An act to grant the right of way to all rail and plank roads and Macadamized turnpikes passing through the public land belonging to the United States.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the right of way shall be, and is hereby granted to all rail and plank road, or Macadamized turnpike companies that are now or that may be chartered within ten years hereafter, over and through any of the public lands of the United States, over which any rail or plank road or Macadamized turnpikes are or may be authorized by an act of the legislature of the respective States in which public lands may be situated; and the said company or companies are hereby authorized to survey and mark through the said public lands, to be held by them for the track of said road, one hundred feet in width: *Provided*, That in case where deep excavation or heavy embankment is required for the grade of such road, then at such places a greater width may be taken by such company, if necessary, not exceeding in the whole two hundred feet.

SEC. 2. *And be it further enacted*, That the said company or companies shall have the right to take from the public lands, in the vicinity of said road or roads, all such materials of earth, stone, or wood, as may be necessary or convenient, from time to time, for the first construction of said road or roads, or any part thereof, through said land.

* See No. 278.

SEC. 3. *And be it further enacted*, That there shall be, and is hereby granted to said company or companies, all necessary sites for watering places, depots, and workshops along the line of said road or roads, so far as the places convenient for the same may fall upon the public lands: *Provided*, That no one depot or watering place shall contain over one square acre, and that said sites shall not be nearer to each other than ten miles along the line or lines of said road or roads: *Provided further*, That the said grants herein contained, as well of the use of the public lands, as of the materials for the construction of said road or roads shall cease and determine, unless the road or roads be begun within ten years from and after the passage of this act, and completed within fifteen years thereafter: *And provided moreover*, That if any road, at any time after its completion, be discontinued or abandoned by said company or companies, the grants hereby made shall cease and determine, and said lands hereby granted, revert back to the general government: *Provided further*, That when a location for either of said railroads or plank roads, Macadamized turnpikes, or sites for depots on the line of such road or roads shall be selected, the proper officers of such road or roads shall transmit to the Commissioner of the General Land-Office a correct plat of the survey of said road or roads, together with the survey of sites for depots before such selection shall become operative: *Provided further*, That none of the foregoing provisions of this act shall apply to, or authorize any rights in any lands of the United States other than such as are held for private entry and sale, and such as are unsurveyed and not held for public use by erection or improvements thereon.

SEC. 4. *And be it further enacted*, That the right of way through the public lands of the United States lying in Black Rock, in the county of Erie and State of New York, be, and the same is hereby granted to the Lockport and Buffalo Railroad Company: *Provided*, That in the opinion of the President of the United States such grant be not injurious to the public interest, and that the location shall be approved by the President as to the position and width of the said railroad: *And provided further*, That if the said railroad shall not be completed within two years, or if at any time after its completion, the said railroad be discontinued or abandoned, the grant shall cease and determine.

Approved, August 4, 1852.

No. 207.—An Act to confirm to the State of Michigan certain lands selected for saline purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the selection and location by the State of Michigan of the lands lying in said State, described as sections numbered two, three, four, five, eight, nine, ten, eleven, fourteen, fifteen, twenty-one and twenty-two, in township seven north, of range fourteen east, heretofore made under and by virtue of the fourth proposition contained in the first section of an act entitled "An act supplementary to the act entitled 'An act to establish the northern boundary line of the State of Ohio, and to provide for the admission of the State of Michigan into the Union, on certain conditions,'" approved June twenty-third, eighteen hundred and thirty-six, be and the same are hereby recognized as valid and confirmed to said State, in lieu of twelve other sections which

were incorrectly noted as confirmations under said act, by reason of an erroneous interpretation given, at the General Land Office, to the original list of selections.

Approved, August 25, 1852.

No. 208.—An Act granting to the State of Michigan the right of way, and a donation of public land for the construction of a ship canal around the Falls of St. Mary's, in said State.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be, and is hereby, granted to said State, the right of locating a canal through the public lands, known as the military reservation at the Falls at St. Mary's River in said State; and that four hundred feet of land in width extending along the line of such canal be, and the same is hereby granted, to be used by said State, or under the authority thereof for the construction and convenience of such canal, and the appurtenances thereto, and the use thereof is hereby vested in said State forever, for the purposes aforesaid, and no other: *Provided*, That in locating the line of said canal through said military reservation, the same shall be located on the line of the survey heretofore made for that purpose, or such other route between the waters above and below said falls, as under the approval of the Secretary of War may be selected. *And provided further*, That said canal shall be at least one hundred feet wide, with a depth of water twelve feet, and the locks shall be at least two hundred and fifty feet long, and sixty feet wide.

SEC. 2. *And be it further enacted*, That there be, and hereby is granted to the said State of Michigan, for the purpose of aiding said State in constructing and completing said canal, seven hundred and fifty thousand acres of public lands, to be selected in subdivisions, agreeably to the United States surveys, by an agent or agents to be appointed by the Governor of said State, subject to the approval of the Secretary of the Interior, from any lands within said State, subject to private entry.

SEC. 3. *And be it further enacted*, That the said lands hereby granted, shall be subject to the disposal of the Legislature of said State for the purposes aforesaid and no other; and the said canal shall be, and remain a public highway for the use of the Government of the United States, free from toll or other charge upon the vessels of said government engaged in the public service, or upon vessels employed by said government in the transportation of any property or troops of the United States.

SEC. 4. *And be it further enacted*, That if the said canal shall not be commenced within three and completed within ten years, the said State of Michigan shall be bound to pay to the United States, the amount which may be received upon the sale of any part of said lands by said State not less than one dollar and twenty-five cents per acre, the title to the purchasers under said State remaining valid.

SEC. 5. *And be it further enacted*, That the Legislature of said State shall cause to be kept, an accurate account of the sales and net proceeds of the lands hereby granted and of all expenditures in the construction, repairs, and operating of said canal, and of the earnings thereof, and shall return a statement of the same annually to the Secretary of the Interior; and whenever said State shall be fully reimbursed for all advances made for the construction, repairs, and operating of said canal, with legal interest on all

advances, until the reimbursement of the same, or upon payment by the United States, of any balance of such advances over such receipts from said lands and canal, with such interest, the said State shall be allowed to tax for the use of said canal, only such tolls as shall be sufficient to pay all necessary expenses for the care, charge, and repairs of the same.

SEC. 6. *And be it further enacted*, That before it shall be competent for said State to dispose of any of the lands to be selected as aforesaid, the route of said canal shall be established as aforesaid, and a plat or plats thereof shall be filed in the office of the War Department, and a duplicate thereof, in the office of the Commissioner of the General Land Office.

Approved, August 26, 1852.

No. 209.—An Act to reduce and define the boundaries of the military reserve at the Saint Peter's river, in the Territory of Minnesota.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of War be, and he is hereby required to cause the lines of the present military reserve at Fort Snelling, in the Territory of Minnesota, to be so contracted as to embrace the following boundaries, to wit:—

Beginning at the middle of the channel of the Mississippi River below Pike's Island; thence ascending along the channel of said river in such a direction as to include all the islands of the river, to the mouth of Brown's creek; thence up said creek to Rice Lake; thence through the middle of Rice Lake to the outlet of Lake Amelia; thence through said outlet and the middle of Lake Amelia, to the outlet of Mother Lake; thence through said outlet and the middle of Mother Lake, to the outlet of Duck Lake; thence through said outlet and the middle of Duck Lake, to the southern extremity of Duck Lake; thence in a line due south to the middle of the channel of the Saint Peter's River; thence down said river so as to include all the islands to the middle of the channel of the Mississippi River; reserving further, for military purposes, a quarter section on the right bank of the St. Peter's River, at the present ferry; and also a quarter section on the left bank of the Mississippi River, at the present ferry across that stream.*

SEC. 2. *And be it further enacted*, That the Commissioner of the General Land Office be, and he is hereby required to cause to be surveyed as soon as practicable, so much of the lands heretofore included in the military reserve aforesaid, but without the limits of the said military reserve aforesaid, as defined by this act, as have not already been surveyed; and to cause the same, together with such of said lands as have been so surveyed, with the exceptions hereinafter set forth, to be sold at public sale, under the direction of the President of the United States.

SEC. 3. *And be it further enacted*, That the land on which the establishment of the Fur Company is situated, known as Mendota, with the settlements immediately around the same, not exceeding three hundred and twenty acres, be, and the same is hereby reserved from sale during the term of one year after the lands surrounding the same shall be offered for sale; and the proper authorities are hereby authorized at any time during said year, to enter the same for a town site, agreeably to and in accordance with the

* Amended. See No. 270.

terms and conditions of "An act for the relief of the citizens of towns upon the lands of the United States under certain circumstances," approved May twenty-third, eighteen hundred and forty-four.*

SEC. 4. *And be it further enacted*, That the lands comprised within the limits of said reserve, be, and the same are hereby annexed to and made a part of the Chippewa Land District, in said Territory of Minnesota.

Approved, August 26, 1852.

No. 210.—An act to create an additional land-office in the Territory of Minnesota.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of the public lands of the United States, in the Territory of Minnesota, east of the Mississippi River, and west of the range lying between ranges twenty-seven and twenty-eight west, and that portion west of the Mississippi River in said Territory, lying north of the nearest township line where the above mentioned range line intersects the east bank of the Mississippi River, be formed into a land district, to be called the Sauk River District; the land-office for which shall be located at such point as the President may direct, and shall be removed from time to time, to other points within said district, whenever in his opinion it may be expedient.

SEC. 2. *And be it further enacted*, That the President be and he is hereby authorized to appoint, by and with the advice and consent of the Senate, a register and receiver for said district, who shall respectively be required to reside at the site of said office, and who shall have the same powers, perform the same duties, and be entitled to the same compensation, as are or may be prescribed by law in relation to other land-offices of the United States. And in case it shall be found necessary or expedient to establish said district during the recess of Congress, the President shall be, and he is hereby, authorized to appoint the necessary officers during such recess, and until the end of the next session of the Senate of the United States.

Approved, August 30, 1852.

No. 211.—An Act making further provisions for the satisfaction of Virginia land warrants.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all unsatisfied outstanding military land-warrants or parts of warrants issued or allowed prior to the first day of March, eighteen hundred and fifty two, by the proper authorities of the Commonwealth of Virginia, for military services performed by the officers and soldiers, seamen or marines, of the Virginia State and continental lines in the Army or Navy of the Revolution, may be surrendered to the Secretary of the Interior, who, upon being satisfied, by a revision of the proofs or by additional testimony, that any warrant thus surrendered was fairly and justly issued in pursuance of the laws of said Commonwealth,

* See No. 79.

for military services so rendered, shall issue land scrip in favor of the present proprietors of any warrant thus surrendered, for the whole or any portion thereof yet unsatisfied, at the rate of one dollar and twenty-five cents for each acre mentioned in the warrant thus surrendered and which remains unsatisfied, which scrip shall be receivable in payment for any lands owned by the United States subject to sale at private entry; and said scrip shall, moreover, be assignable by indorsement attested by two witnesses. In issuing such scrip, the said Secretary is authorized, when there are more persons than one interested in the same warrant, to issue to each person scrip for his or her portion of the warrant; and where infants or feme coverts may be entitled to any scrip, the guardian of the infant and the husband of the feme covert may receive and sell or locate the same. *Provided*, that no less than a legal subdivision shall be entered and paid for by the scrip issued in virtue of this act.

SEC. 2. *And be [it] further enacted*, That this act shall be taken as a full and final adjustment of all bounty-land claims to the officers and soldiers, seamen and marines of the State of Virginia for services in the war of the Revolution: *Provided*, That the State of Virginia shall by a proper act of the legislature thereof relinquish all claim to the lands in the Virginia military land district in the State of Ohio.

SEC. 3. *And be it further enacted*, That in settling the claims of the State of Ohio, under the acts of March second, eighteen hundred and twenty-seven, and May twenty-fourth, eighteen hundred and twenty-eight, granting lands to said State for canal purposes, the same principles shall be acted upon as have been applied under the provisions of the act of May the ninth, eighteen hundred and forty-eight, entitled "An act in addition to an act therein mentioned," for the settlement of the claims of the State of Indiana, accruing under the said act of March the second, eighteen hundred and twenty-seven.

Approved, August 31, 1852.

NO. 212.—An Act to amend an Act entitled "An Act to establish the Territorial Government of Oregon;" approved August fourteenth, eighteen hundred and forty-eight.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Legislative Assembly of the Territory of Oregon be, and hereby are authorized, in all cases where the sixteen or thirty-six sections, or any part thereof, shall be taken and occupied under the law making donations of land to actual settlers, or otherwise, to cause the county commissioners of the several counties in said Territory, or such other officer or officers as they shall direct, to select, in lieu thereof, an equal quantity of any unoccupied land in sections, or fractional sections, as the case may be.*

SEC. 2. *And be it further enacted*, That when selections are made in pursuance of the provisions of the first section of this act, said lands so selected, and their proceeds, shall be forever inviolably set apart for the benefit of common schools.

Approved, January 7, 1853.

* See No. 154.

No. 213.—An Act authorizing certain soldiers of the late war with Great Britain to surrender the bounty lands drawn by them, and to locate others in lieu thereof.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall and may be lawful for any soldier in the late war with Great Britain, to whom bounty land has been allotted and patented in any State of this Union, by virtue of the laws of the United States passed prior to the year 1850, which was and is unfit for cultivation, to surrender said patent, and to receive in lieu thereof the same quantity of any of the public land subject to private entry at the minimum price as he may select: *Provided,* That before receiving such new land, it shall be proved to the satisfaction of the Commissioner of the General Land Office, that the land so allotted and patented to said soldier is unfit for cultivation, and that said soldier has never disposed of his interest in said land by any sale of his own, and that the same has not been taken or disposed of for his debts due to any individual, and that he shall release all his interest in the same to the United States in such way as said Commissioner shall prescribe,—and such surrender and location shall be made within five years from the passage of this act.

Approved, January 7, 1853.

No. 214.—An Act to amend an act entitled “An act for the discontinuance of the office of Surveyor-General in the several districts, so soon as the surveys therein can be completed; for abolishing land offices under certain circumstances, and for other purposes.”†

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in all cases where, as provided in the first section of the Act entitled “An Act for the discontinuance of the office of Surveyor-General in the several districts, so soon as the surveys therein can be completed, for abolishing land offices under certain circumstances, and for other purposes, approved the twelfth of June, eighteen hundred and forty, the field notes, maps, records, and other papers appertaining to land titles in any State, shall have been, or shall be, turned over to the authorities of such State, and the same authority, powers, and duties in relation to the survey, re-survey or subdivision of the lands therein, and all matters and things connected therewith, as previously exercised by the Surveyor-General, whose district included such State, shall be, and they are hereby, vested in, and devolved upon, the Commissioner of the General Land Office.

SEC. 2. *And be it further enacted,* That under the authority and direction of the Commissioner of the General Land Office, any Deputy Surveyor, or other agent of the United States, shall have free access to any such field notes, maps, records, and other papers, for the purpose of taking extracts therefrom or making copies thereof without charge of any kind.

SEC. 3. *And be it further enacted,* That the field notes, maps, records, and other papers mentioned in the first section of the act to which this is an amendment, shall in no case hereafter be turned over to the authorities of any State, until such State shall have provided by law for the reception

* See Nos. 55, 143, 190, 230, 254, 256, 282.

† See No. 42.

and safe keeping of the same as public records, and for the allowance of free access to the same by the authorities of the United States, as herein provided.

Approved, January 22, 1853.

No. 215.—An Act to extend the provisions of an act approved the third of March, eighteen hundred and forty-seven, and the act approved the twenty-sixth of February, eighteen hundred and forty-nine, for carrying into effect the existing compacts with the States of Alabama and Mississippi, in relation to the five per cent. fund and school reservations.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of "An act to amend an act entitled 'An act to amend an act to carry into effect, in the States of Alabama and Mississippi, the existing compacts with those States with regard to the five per cent. fund, and school reservations,' " approved March the third, one thousand eight hundred and forty-seven, and the act to extend the provisions of said act, approved February twenty-sixth, eighteen hundred and forty-nine, be, and the same are hereby extended, so as to allow the State of Alabama three years from the passage of this act, to complete the selections of land authorized by the said acts to which this is an amendment.

Approved, January 25, 1853.

No. 216.—An Act granting the right of way and making a grant of land to the States of Arkansas and Missouri, to aid in the construction of a railroad from a point on the Mississippi, opposite the mouth of the Ohio river, via Little Rock, to the Texas boundary near Fulton, in Arkansas, with branches to Fort Smith on the Mississippi river.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the right of way through the public lands be and the same is hereby granted to the States of Arkansas and Missouri, for the construction of a railroad from a point on the Mississippi River, opposite the mouth of the Ohio, in the State of Missouri, via Little Rock, to the Texas boundary line near Fulton, in Arkansas, with branches from Little Rock, in Arkansas, to the Mississippi River and to Fort Smith, in said State, with the right to take necessary materials of earth, stone, timber, etc., for the construction thereof: *Provided,* That the right of way shall not exceed one hundred feet on each side of the length thereof, and a copy of the survey of said road, made under the direction of the Legislatures of the said States, shall be forwarded to the proper local land offices respectively, and to the General Land Office at Washington city, within ninety days after the completion of the same.

SEC. 2. *And be it further enacted,* That there be and is hereby granted to the States of Arkansas and Missouri, respectively, for the purpose of aiding in making the railroad and branches as aforesaid, within their respective limits, every alternate section of land designated by even numbers, for six sections in width on each side of said road and branches; but in

* See Nos. 131, 161.

case it shall appear that the United States have, when the line or route of said road is definitely fixed by the authority aforesaid, sold any part of any section hereby granted, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents, to be appointed by the Governor of said State, to select, subject to the approval aforesaid, from the lands of the United States most contiguous to the tier of sections above specified, so much land in alternate sections or parts of sections as shall be equal to such lands as the United States have sold, or to which the right of pre-emption has attached as aforesaid, which lands, being equal in quantity to one half of six sections in width on each side of said road, the States of Arkansas and Missouri shall have and hold to and for the use and purpose aforesaid: *Provided*, That the lands to be located shall in no case be further than fifteen miles from the line of the road: *And provided further*, That the lands hereby granted shall be applied in the construction of said road, and shall be disposed of only as the work progresses, and shall be applied to no other purpose whatsoever: *And provided further*, That any and all lands reserved to the United States by any act of Congress, for the purpose of aiding in any object of internal improvement, or in any manner for any purpose whatsoever, be and the same are hereby reserved to the United States from the operation of this act, except so far as it may be found necessary to locate the routes of the said railroad and branches through such reserved lands.

SEC. 3. *And be it further enacted*, That the sections and parts of sections of land which by such grant shall remain to the United States within six miles on each side of said road, shall not be sold for less than double the minimum price of the public lands when sold.

SEC. 4. *And be it further enacted*, That the said lands hereby granted to the said States shall be subject to the disposal of the Legislatures thereof, for the purposes aforesaid and no other; and the said railroad and branches shall be and remain a public highway for the use of the Government of the United States, free from toll or other charge upon the transportation of any property or troops of the United States.

SEC. 5. *And be it further enacted*, That the lands hereby granted to said States shall be disposed of by said States only in the manner following; that is to say, that a quantity of land not exceeding one hundred and twenty sections, and included within a continuous length of twenty miles of said road, may be sold; and when the Governors of said State or States shall certify to the Secretary of the Interior that twenty continuous miles of said road is completed, then another like quantity of land hereby granted may be sold; and so from time to time until said road is completed; and if said road is not completed within ten years, no further sales shall be made, and the land unsold shall revert to the United States.

SEC. 6. *And be it further enacted*, That the United States Mail shall at all times be transported on the said road and branches, under the direction of the Post-Office Department, at such price as Congress may by law direct.

Approved, February 9, 1853.

No. 217.—An Act for the relief of the town of Belleview, and the cities of Burlington and Dubuque, in the State of Iowa.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there shall be and hereby is granted to the town of Belleview, in Iowa, the land bordering on the Mississippi river, in front of said town, reserved by the act of second July, eighteen hundred and thirty-six, for a public highway, and for other public uses: together with the accretions which may have formed thereto, or in front thereof, to be disposed of in such manner as the corporate authorities of said town may direct. The grant made by this act shall operate as a relinquishment only of the right of the United States in and to said premises, and shall in no manner affect the rights of third persons therein, or to the use thereof, but shall be subject to the same; and on application by a duly authorized agent of the corporate authorities of said town to the Commissioner of the General Land Office, a patent of relinquishment, in accordance with the provisions of this act, shall be issued therefor, as in other cases.

SEC. 2. *And be it further enacted,* That there shall be and hereby is granted to the cities of Burlington and Dubuque, in Iowa, the land bordering on the Mississippi river, in front of said cities, reserved by the act of second July, eighteen hundred and thirty-six, for a public highway, and for other public uses, together with the accretions which may have formed thereto or in front thereof; to be disposed of in such manner as the corporate authorities of said cities may direct.

SEC. 3. *And be it further enacted,* That the grant made by this act shall operate as a relinquishment only of the right of the United States in and to said premises, and shall in no manner affect the rights of third persons therein, or to the use thereof, but shall be subject to the same; and on application by a duly authorized agent of the corporate authorities of said cities to the Commissioner of the General Land Office, a patent of relinquishment, in accordance with the provisions of this act, shall be issued therefor, as in other cases.

SEC. 4. *And be it further enacted,* That the lot or parcel of land in the city of Dubuque heretofore set apart and used by the authorities of said city as a cemetery or burying ground, under the act of Congress of the second July, eighteen hundred and thirty-six, entitled "An act for the laying off the towns of Fort Madison and Burlington, in the county of Des Moines, and the towns of Belleview, Dubuque, and Peru, in the county of Dubuque, Territory of Wisconsin, and for other purposes," and the act of the third of March, eighteen hundred and thirty-seven, amendatory thereof, be and the same hereby is granted to the Common Council of the said city of Dubuque, to make such disposition of the said land included in said cemetery or burying ground as that Common Council may deem proper.

Approved, February 14, 1853.

No. 218.—An Act to amend an act entitled “An act to create the office of Surveyor-General of the public lands in Oregon, and to provide for the survey, and to make donations to the settlers of the said public lands,” approved September twenty-seventh, eighteen hundred and fifty.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all persons who have located or may hereafter locate lands in the Territory of Oregon, in accordance with the provisions of an act entitled “An act to create the office of Surveyor-General of the Public Lands in Oregon, and to provide for the Survey, and to make Donations to the Settlers of the said Public Lands,” approved September twenty-seven, eighteen hundred and fifty, and of which survey shall have been made or may hereafter be had, in lieu of the term of continued occupation after settlement, as provided by said act, shall be permitted, after occupation for two years of the land so claimed, to pay into the hands of the Surveyor-General of said Territory at the rate of one dollar and twenty-five cents per acre for the lands so claimed, located, and surveyed as aforesaid; and upon the death of any settler before the expiration of the two years’ continued possession required by this act, all the rights of the deceased under this act shall descend to the heirs at law of such settler, including the widow, where one is left, in equal parts; and proof of compliance with the conditions of this act, up to the time of the death of such settler, shall be sufficient to entitle them to the patent.

SEC. 2. *And be it further enacted,* That upon the payment of money for lands as aforesaid to the said Surveyor-General, he shall issue his certificate of such payment, together with an accurate copy of the survey of the land so located, and purchased, to the purchaser thereof, and upon the filing of which said certificate and copy of survey in the office of the Commissioner of the General Land Office, a patent shall issue therefor as in other cases.

SEC. 3. *And be it further enacted,* That it shall be the duty of the said Surveyor-General to keep and preserve a record of all moneys so received, and to make out and transmit quarterly, to the Commissioner of the General Land Office, an accurate report of the moneys so received by him as aforesaid.

SEC. 4. *And be it further enacted,* That it shall be the duty of the said Surveyor-General, immediately upon the taking effect of this act, to enter into security in the sum of fifty thousand dollars, conditioned for the safe keeping of all moneys received by him as Surveyor-General, according to law: *Provided however,* That in order to compensate the Surveyor-General of said Territory for the additional labors and responsibility imposed upon him by this act, in receiving, safe-keeping, paying over, and accounting for the moneys aforesaid, he shall receive two per centum on all such sums, which shall include the payment for clerk hire, together with all costs and expenses incidental to such special services in any one year: *Provided,* The salary and per centage of said Surveyor-General, and for clerk hire, shall not exceed four thousand dollars for any one year.

SEC. 5. *And be it further enacted,* That the provisions of the act to which this is an amendment be and the same are hereby extended and continued in force until the first day of December, eighteen hundred and fifty-five.

SEC. 6. *And be it further enacted,* That every person entitled to the benefit of the fourth section of the act of which this is amendatory, who

* See Nos. 180, 244, 266.

was resident in said Territory on or prior to the first of December, eighteen hundred and fifty, shall be and hereby is required to file with the Surveyor-General of said Territory, in advance of the time when the public surveys shall be extended over the particular land claimed by him, where those surveys shall not have been made previous to the date of this act, a notice in writing, setting forth his claim to the benefits of said section, and citing all required particulars in reference to such settlement claim; and all persons failing to give such notice on or prior to the first of December, eighteen hundred and fifty-three, shall be thereafter debarred from ever receiving any benefit under said fourth section. And all persons who, on the first December, eighteen hundred and fifty-three, shall have settled on surveyed lands in said Territory, in virtue of the provisions of the fifth section of the act of which this is amendatory, who shall fail to give notice in writing of such settlement, specifying the particulars thereof to the Surveyor-General of said Territory, on or prior to the first of April, eighteen hundred and fifty-five, shall be thereafter debarred from ever receiving the benefits of said fifth section.

SEC. 7. *And be it further enacted*, That from and after the first of April, eighteen hundred and fifty-five, all public lands within the limits of the townships surveyed or to be surveyed in said Territory, west of the Cascade mountains, which shall not have been claimed under the provisions of the fourth and fifth sections of the act of which this is amendatory, or reserved for public uses by law, or order of the President, and excepting also mineral lands, shall be subject to public sale and private entry as other public lands of the United States; and so soon as he shall deem expedient, the President of the United States shall, by and with the advice and consent of the Senate, appoint a receiver of public moneys for the Territory of Oregon, west of the Cascade mountains, who shall give bond and security, in the penalty of fifty thousand dollars, for the faithful discharge of his official trust, and whose duties, under the laws in relation to the public lands of the United States in said Territory, shall be the same as those of other like officers of the United States, and who shall be allowed not exceeding five hundred dollars per annum for the safe-keeping and accounting for the public moneys by him received, including all charges for office rent and clerk hire; and at such time as the President of the United States shall deem it expedient, he shall appoint, by and with the advice and consent of the Senate, a Register of the land office for the Territory of Oregon, west of the Cascade mountains, who shall enter into bond, with sufficient security, for the faithful discharge of his official duties, as other like officers, and whose duties and authority, under the direction of the Secretary of the Interior, shall be the same as those imposed by law on other like officers, consistently with the provisions of this act and of the act of which this is amendatory, and whose compensation shall be equal to that allowed to the Receiver of Public Moneys to be appointed under this act; and until such Register shall have been appointed, and entered upon the discharge of his official duties, the Surveyor-General of Oregon shall perform all the duties which shall appertain to such office.

SEC. 8. *And be it further enacted*, That each widow now residing in Oregon Territory, and such others as shall locate in said Territory, whose husband, had he lived, would have been entitled to a claim under the provisions of the act to which this is an amendment, shall be entitled, under the provisions and requirements of said act, to the same quantity of land that she would have been but for the death of her husband; and that in case of the death of the widow prior to the expiration of the four years' continued possession required by said act, to which this is an amendment,

all the rights of the deceased shall inure unto and be vested in the heirs at law of such widow.

SEC. 9. *And be it further enacted*, That all reservations heretofore, as well as hereafter, made in pursuance of the fourteenth section of the act to which this is an amendment, shall, for magazines, arsenals, dock-yards, and other needful public uses, except for forts, be limited to an amount not exceeding twenty acres for each and every of said objects at any one point or place, and for forts to an amount not exceeding six hundred and forty acres at any one point or place: *Provided*, That if it shall be deemed necessary, in the judgment of the President, to include in any such reservation the improvement of any settler made previous to such reservation, it shall, in such case, be the duty of the Secretary of War to cause the value of such improvements to be ascertained; and the amount so ascertained shall be paid to the party entitled thereto, out of any money in the Treasury not otherwise appropriated.

SEC. 10. *And be it further enacted*, That the said Surveyor-General, in the discharge of his duties under this act, shall be subject to all the provisions of the act entitled "An act to provide for the better organization of the Treasury, and for the collection, safe-keeping, transfer, and disbursement of the public revenue," approved August sixth, eighteen hundred and forty-six; and all acts and parts of acts in conflict with the provisions, of this act be and the same are hereby repealed.

Approved, February 14, 1853.

No. 219.—An Act to establish the territorial government of Washington.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the passage of this act, all that portion of Oregon Territory lying and being south of the forty-ninth degree of north latitude, and north of the middle of the main channel of the Columbia River, from its mouth to where the forty-sixth degree of north latitude crosses said river, near Fort Wallawalla, thence with said forty-sixth degree of latitude to the summit of the Rocky Mountains, be organized into and constitute a temporary government by the name of the Territory of Washington: *Provided*, That nothing in this act contained shall be construed to affect the authority of the government of the United States to make any regulation respecting the Indians of said Territory, their lands, property, or other rights, by treaty, law, or otherwise, which it would have been competent to the government to make if this act had never been passed: *Provided further*, That the title to the land, not exceeding six hundred and forty acres, now occupied as missionary stations among the Indian tribes in said Territory, or that may have been so occupied as missionary stations prior to the passage of the act establishing the Territorial government of Oregon, together with the improvements thereon, be, and is hereby, confirmed and established to the several religious societies to which said missionary stations respectively belong.

* * * * *

SEC. 6. *And be it further enacted*, That the Legislative power of the Territory shall extend to all rightful subjects of legislation not inconsistent with the Constitution and laws of the United States. But no law shall be passed interfering with the primary disposal of the soil; no tax shall be

imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents. All the laws passed by the Legislative Assembly shall be submitted to the Congress of the United States, and, if disapproved, shall be null and of no effect; *Provided*, That nothing in this act shall be construed to give power to incorporate a bank or any institution with banking powers, or to borrow money in the name of the Territory, or to pledge the faith of the people of the same for any loan whatever, directly or indirectly. No charter granting any privileges of making, issuing, or putting into circulation any notes or bills in the likeness of bank-notes, or any bonds, scrip, drafts, bills of exchange, or obligations, or granting any other banking powers or privileges, shall be passed by the Legislative Assembly; nor shall the establishment of any branch or agency of any such corporation, derived from other authority, be allowed in said Territory; nor shall said Legislative Assembly authorize the issue of any obligation, scrip, or evidence of debt, by said Territory, in any mode or manner whatever, except certificates for service to said Territory. And all such laws, or any law or laws inconsistent with the provisions of this act, shall be utterly null and void. And all taxes shall be equal and uniform; and no distinctions shall be made in the assessments between different kinds of property, but the assessments shall be according to the value thereof. To avoid improper influences, which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title.

* * * * *

SEC. 12. *And be it further enacted*, That the laws now in force in said Territory of Washington, by virtue of the legislation of Congress in reference to the Territory of Oregon, which have been enacted and passed subsequent to the first day of September, eighteen hundred and forty-eight, applicable to the said Territory of Washington, together with the legislative enactments of the Territory of Oregon, enacted and passed prior to the passage of, and not inconsistent with the provisions of this act, and applicable to the said Territory of Washington, be, and they are hereby, continued in force in said Territory of Washington until they shall be repealed or amended by future legislation.

* * * * *

SEC. 20. *And be it further enacted*, That when the lands in said Territory shall be surveyed under the direction of the Government of the United States, preparatory to bringing the same into market or otherwise disposing thereof, sections numbered sixteen and thirty-six in each township in said Territory shall be, and the same are hereby, reserved for the purpose of being applied to common schools in said Territory. And in all cases where said sections sixteen and thirty-six, or either or any of them, shall be occupied by actual settlers prior to survey thereof, the County Commissioners of the counties in which said sections so occupied as aforesaid are situated, be, and they are hereby, authorized to locate other lands to an equal amount in sections, or fractional sections, as the case may be, within their respective counties, in lieu of said sections so occupied as aforesaid.

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Approved, March 2, 1853.

No. 220.—An Act making appropriations for the civil and diplomatic expenses of government for the year ending the thirtieth of June, eighteen hundred and fifty-four.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums be and are hereby appropriated, out of any money in the Treasury not otherwise appropriated, for the objects hereafter expressed, for the fiscal year ending the thirtieth of June, eighteen hundred and fifty-four, namely :

* * * * *

For cash system and military patents, under laws prior to thirtieth of September, eighteen hundred and fifty; patent and other records, tract-books, blank-books, for the district land offices; binding plats, field notes, &c.; stationery, office furniture, and repairs of same, and miscellaneous items, thirty-six thousand three hundred and twenty-five dollars: *Provided*, That whenever the cost of collecting the revenue from the sales of the public lands in any United States land district shall be as much as one-third of the whole amount of revenue collected in such district, it shall and may be lawful for the President of the United States, if, in his opinion, not incompatible with the public interest, to discontinue the land office in such district, and to annex the said district to some other adjoining land district or districts of the United States;

* * * * *

For salaries and commissions of Registers of Land Offices and Receivers of Public Moneys, one hundred and forty-one thousand seven hundred dollars: *Provided*, That whenever the amount received at any United States land office under the third section of an act entitled "An act to make land warrants assignable, and for other purposes," approved March twenty-second, eighteen hundred and fifty-two, has exceeded or shall exceed the amount which the registers and receivers at any such office are entitled to receive under said third section, the surplus which shall remain, after paying the amount so due as aforesaid to said registers and receivers, shall be paid into the Treasury of the United States as other public moneys: *And provided further*, That the President be and he is hereby authorized to change the location of the several land offices, and to establish the same from time to time, at such other place in the district as he may deem expedient.

* * * * *

SEC. 19. *And be it further enacted*, That whenever the land office at Pontotoc, Mississippi, shall be discontinued, the records and files thereof shall be placed in the possession of the clerk of the United States district court for the northern district of Mississippi, who is hereby made keeper of the same, and authorized to perform all the duties now conferred upon the register and receiver, and shall receive for his services therefor a sum not exceeding five hundred dollars per annum.

* * * * *

Approved, March 3, 1853.

No. 221.—An Act making appropriations for the current and contingent expenses of the Indian department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June thirtieth, one thousand eight hundred and fifty-four.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums be and they are hereby appropriated, out of any money in the Treasury not otherwise appropriated, for the purpose of paying the current and contingent expenses of the Indian Department, and fulfilling treaty stipulations with the various Indian tribes.

* * * * *

That the President of the United States, if upon examination he shall approve of the plan hereinafter provided for the protection of the Indians, be and he is hereby authorized to make five military reservations from the public domain in the State of California or the Territories of Utah and New Mexico bordering on said State, for Indian purposes : *Provided*, That such reservations shall not contain more than twenty-five thousand acres in each : *And provided further*, That said reservation shall not be made upon any lands inhabited by citizens of California, and the sum of two hundred and fifty thousand dollars is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to defray the expenses of subsisting the Indians in California and removing them to said reservations for protection : *Provided further*, if the foregoing plan shall be adopted by the President, the three Indian agencies in California shall be thereupon abolished.*

SEC. 2. *And be it further enacted*, That the President of the United States be, and he hereby is, authorized, immediately after the passage of this act, to enter into negotiation with the Indian tribes west of the States of Missouri and Iowa, for the purpose of securing the assent of said tribes to the settlement of the citizens of the United States upon the lands claimed by said Indians, and for the purpose of extinguishing the title of said Indian tribes in whole or in part to said lands. * * * *

Approved, March 3, 1853.

No. 222.—An Act to extend pre-emption rights to certain lands therein mentioned.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the pre-emption laws of the United States, as they now exist, be and they are hereby extended over the alternate reserved sections of public lands along the lines of all the railroads in the United States wherever public lands have been or may be granted by acts of Congress ; and that it shall be the privilege of the persons residing on any of said reserved lands to pay for the same in soldiers' bounty land warrants, estimated at a dollar and twenty-five cents per acre, or in gold and silver, or both together, in preference to any other person, and at any time before the same shall be offered for sale at auction : *Provided*, That no person shall be entitled to the benefit of this act who has not settled and improved, or shall not settle and improve, such lands prior to the final allotment of the alternate sections to such railroads by the Gene-

* Last part repealed. See No. 280.

ral Land Office; *And provided further*, That the price to be paid shall in all cases be two dollars and fifty cents per acre, or such other minimum price as is now fixed by law, or may be fixed upon lands hereafter granted; and no one person shall have the right of pre-emption to more than one hundred and sixty acres: *And provided further*, That any settler who has settled or may hereafter settle on lands heretofore reserved on account of claims under, French, Spanish, or other grants which have been or shall be hereafter declared by the Supreme Court of the United States to be invalid, shall be entitled to all the rights of pre-emption granted by this act and the act of fourth of September, eighteen hundred and forty-one, entitled "An act to appropriate the proceeds of the public lands and to grant pre-emption rights," after the lands shall have been released from reservation, in the same manner as if no reservation existed.*

Approved, March 3, 1853.

No. 223.—An Act authorizing changes in the location of land offices.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President be and he is hereby authorized to change the location of the land offices in the several land districts established by law, and to establish the same from time to time at such point in the district as he may deem expedient.

Approved, March 3, 1853.

No. 224.—An Act to provide for the survey of the public lands in California, the granting of pre-emption rights therein, and for other purposes.†

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Surveyor-General for the District or State of California, who is now or may hereafter be appointed by the President, by and with the advice and consent of the Senate, shall keep his office at such place as the President, in view of the public convenience, shall from time to time direct; and the Surveyor-General, if he has not already done so, and his successors in office, before entering upon duty, shall take and subscribe an oath or affirmation, before a judge of a United States Court, or other competent officer, to support the Constitution of the United States, and faithfully discharge the duties of his office, and give bond in the same amount as other Surveyors-General, the penalty thereof to be increased whenever the Secretary of the Interior shall deem proper. He shall be entitled to receive a salary at the rate of four thousand five hundred dollars per annum, payable quarter-yearly, to commence from the time of entering into bond.

SEC. 2. *And be it further enacted*, That there shall be allowed for clerk hire in the office of the Surveyor-General the sum of eleven thousand dollars per annum, or so much thereof as may be necessary: *Provided*, That the salary of no clerk shall exceed the sum of twenty-five hundred dollars per annum; and for office rent, fuel, and other incidental expenses of his office, such sums as shall be found necessary by the Secretary of the Interior

* Extended. See No. 269.

† See No. 233.

not exceeding the sum of ten thousand dollars. And the Secretary of the Interior is hereby authorized to cause an official seal to be prepared for the office of the said Surveyor-General: and any copy of or extracts from the plats, field-notes, and other records and documents on file in his office, when attested as such, by the said seal, and the signature of the Surveyor-General, shall in all judicial matters, have the same force and effect as the originals.

SEC. 3. *And be it further enacted*, That the said Surveyor-General shall have the same power and authority, and perform the same duties respecting the public lands and private claims in the State of California, as by law appertain to and are required of the Surveyor-General in Louisiana, except so far as the same may be modified by this act. He shall engage a sufficient number of skilful surveyors as his deputies, whom he shall cause to survey, measure, and mark base and meridian lines through such points, and perpetuated by such monuments, and also to survey and establish the other meridians as may be prescribed, and also to survey and establish the other lines of the public lands. He shall also cause all private claims to be surveyed after they have been confirmed, so far as may be necessary to complete the surveys of the public lands; and in the location and survey of them he shall have the same power and authority as are conferred on the land officers of Louisiana by the sixth section of the act of third March, eighteen hundred and thirty-one, creating the office of the Surveyor-General for that State; and for surveying the base and meridian lines, and private claims, and meandering navigable waters, the deputy surveyor shall be allowed not exceeding sixteen dollars per mile; and for surveying the other lines of the public lands there shall be paid not exceeding an average of twelve dollars per mile: *Provided*, That none other than township lines shall be surveyed when the lands are mineral or are deemed unfit for cultivation; and no allowance shall be made for such lines as are not actually run and marked in the field, and were actually necessary to be run.

SEC. 4. *And be it further enacted*, That if, in the opinion of the Secretary of the Interior it shall be advisable, he is hereby authorized to direct such surveys after what is known as the geodetic method. And whenever, in the opinion of the Secretary of the Interior, a departure from the rectangular mode of surveying and subdividing the public lands would promote the public interests, he may direct such change to be made in the mode of surveying and designating the said lands as he may deem proper, with reference to the existence of mountains, mineral deposits, and the advantages derived from timber and water privileges: *Provided*, That such lands shall not be surveyed into less than one hundred and sixty acres, or subdivided into less than forty acres.

SEC. 5. *And be it further enacted*, That there shall be appointed by the President, by and with the advice and consent of the Senate, a register of the land office and receiver of public moneys for the State of California, at such time as, in his judgment, the public interest may demand, with a salary each of three thousand dollars per annum, payable quarter-yearly; and the land office shall be located at such place as the President, in view of the public convenience, shall from time to time direct; and, previously to entering on the duties of their offices, they each shall take and subscribe an oath or affirmation, before one of the Judges of the United States Courts, or other competent officer, to support the Constitution of the United States, and faithfully to discharge the duties of their respective offices, and shall give bond in the same amount as other registers and receivers of the public land offices: and their general duties and responsibilities shall be the same as other officers of like character: *Provided however*, That at such time or times as in his judgment the public interest may so imperatively require,

and in the absence of any further and special legislation of Congress on the subject, it shall be lawful for the President of the United States to divide the State of California into two or three separate and distinct land districts, as circumstances shall determine to be necessary, embracing respectively the upper and lower, or the upper, middle, and lower portions of the State; and he shall appoint, by and with the advice and consent of the Senate, or during the recess of Congress when necessary, a register of the land office and receiver of public moneys for each of such land districts; and the land offices for the same respectively shall be located at, and be removed from time to time to such places as the President shall deem most suitable for public convenience.

SEC. 6. *And be it further enacted*, That all the public lands in the State of California, whether surveyed or unsurveyed, with the exception of sections sixteen and thirty-six, which shall be and hereby are granted to the State for the purposes of public schools in each township, and with the exception of lands appropriated under the authority of this act, or reserved by competent authority, and excepting also the lands claimed under any foreign grant or title and the mineral lands, shall be subject to the pre-emption laws of fourth September, eighteen hundred and forty-one,* with all the exceptions, conditions, and limitations therein, except as is herein otherwise provided; and shall, after the plats thereof are returned to the office of the register, be offered for sale, after six months' public notice in the State of the time and place of sale, under the laws, rules, and regulations now governing such sales, or such as may be hereafter prescribed: *Provided*, That where unsurveyed lands are claimed by pre-emption, the usual notice of such claim shall be filed within three months after the return of the plats of surveys to the land offices, and proof and payment shall be made prior to the day appointed by the President's proclamation for the commencement of the sale, including such lands; the entry of such claims to be made by legal subdivisions, according to the United States' survey, and in the most compact form:† *And provided further*, That the fact of persons having heretofore had the benefit of said act of the fourth of September, eighteen hundred and forty-one, shall interpose no bar to their obtaining the benefits of this act; and all of said lands that shall remain unsold after having been proclaimed and offered, shall be subject to entry at private sale as other public land, at the same minimum price per acre; and the register and receiver shall not be entitled to any per centage or fees, except for deciding pre-emption cases, when each of them shall be allowed the same fees as are paid to other like officers; but the receiver shall be entitled to his actual necessary expenses, going and returning, in making his deposits: *Provided*, That nothing in this act shall be construed to authorize any settlement to be made on any public lands not surveyed, unless the same be made within one year from the passage of this act; nor shall any right of such settlers be recognized by virtue of any settlement or improvement made of such unsurveyed lands subsequent to that day: *And provided further*, That this act shall not be construed to authorize any settlement to be made on any tract of land in the occupation or possession of any Indian tribe, or to grant any pre-emption right to the same.

SEC. 7. *And be it further enacted*, That where any settlement, by the erection of a dwelling-house or the cultivation of any portion of the land, shall be made upon the sixteenth and thirty-sixth sections, before the same shall be surveyed, or where such sections may be reserved for public uses or taken by private claims, other land shall be selected by the proper

* See No. 48.

† See No. 233.

authorities of the State in lieu thereof, agreeably to the provisions of the act of Congress approved on the twentieth of May, eighteen hundred and twenty-six, entitled "An act to appropriate lands for the support of schools in certain townships and fractional townships, not before provided for," and which shall be subject to approval by the Secretary of the Interior. And no person shall make a settlement or location upon any tract or parcel of land selected for a military post, or within one mile of such post, or on any other lands reserved by competent authority; nor shall any person obtain the benefits of this act by a settlement or location on mineral lands.

SEC. 8. *And be it further enacted*, That the public lands, not being mineral lands, occupied as towns or villages, shall not be subdivided, or subject to sale, or to be appropriated by settlers, under the provisions of this act; but the whole of such lands, whether settled upon before or after the survey of the same, shall be subject to the provisions of the act entitled "An act for the relief of the citizens of towns upon the lands of the United States, under certain circumstances," approved May twenty-third, eighteen hundred and forty-four, except such towns as are located on or near mineral lands, the inhabitants of which shall have the right of occupation and cultivation only until such time as Congress shall dispose of the same; nor shall any lands specially reserved for public uses be appropriated under the provisions of this act.*

SEC. 9. *And be it further enacted*, That whenever the public surveys, or any portion of them authorized by this act, or by the act approved September twenty-seventh, eighteen hundred and fifty, entitled "An act to create the office of Surveyor-General of the Public Lands in Oregon, and to provide for the survey and to make donations to settlers of the said public lands," are so required to be made, as to render it expedient to make compensation for the surveying thereof by the day, instead of by the mile, it shall be lawful for the Commissioner of the General Land Office, under the direction of the Secretary of the Interior, to make such fair and reasonable allowance as, in his judgment, shall be necessary to insure the accurate and faithful execution of the work.†

SEC. 10. *And be it further enacted*, That, except where the President of the United States shall see cause otherwise to determine, each officer to be appointed in virtue of this act, and also every other like officer of the United States, may continue in the uninterrupted discharge of his regular official duties, and is hereby authorized accordingly so to act, after the day of expiration of his official commission, and until a new commission shall be issued to him for the same office, or otherwise, until the day when a successor shall enter upon the duties of such office; and the existing official bond of any such officer so acting shall be deemed and held to be good and sufficient, and in force until the date of the approval of a new bond to be given by him if recommissioned, or otherwise, for the additional time wherein he may so continue officially to act, pursuant to authority hereof. And the provision as to bonds to be given by Deputy-Surveyors for the faithful execution of their duties, in a penalty of double the estimated amount of money accruing to them under their surveying contracts, as required by the act of March third, eighteen hundred and thirty-one, entitled "An act to create the office of Surveyor-General of the public lands for the State of Louisiana," referred to in the third section of this act, shall be and the same is hereby made applicable to the public surveys in the State of California; and the sufficiency of the sureties to all such bonds shall be approved and certified by the proper Surveyor-General; and the same pro-

* See No. 79.

† See No. 181.

vision is hereby extended to all other branches of the public surveying service elsewhere; and all such bonds heretofore required of Deputy-Surveyors, according to usage in the surveying service, shall be deemed and held to be of the same validity as if the same had been required by law. And it is hereby made the duty of each of the respective Surveyors-General of the public lands of the United States, so far as is compatible with the desk duties of his office, occasionally to inspect the surveying operations while in progress in the field, sufficiently to satisfy himself, from actual inspection, of the fidelity of the execution of the work according to contract, and the actual and necessary expenses incurred by him while so engaged shall be allowed; and where it is incompatible with his other duties for a Surveyor-General to devote the time necessary to make a personal inspection of the work in progress, then he shall be and hereby is authorized to depute a confidential agent to make such examination; and the actual and necessary expenses of such person shall be allowed and paid for that service, and five dollars per day during the examination in the field: *Provided*, That such examination shall not be protracted beyond thirty days, and in no case longer than is actually necessary; and when a Surveyor-General, or any person employed in his office at a regular salary, shall be engaged in such special service, he or they shall only receive his necessary expenses in addition to his regular salary.

SEC. 11. *And be it further enacted*, That the Secretary of the Interior be and he is hereby authorized and required to cause to be provided for the office of the Surveyor-General of Oregon, a seal, with such device as shall be deemed suitable, and copies of any papers on file in his office which may be authenticated by him under said seal shall be evidence in all cases in which the originals would be evidence, and from and after the passage of this act the salary of said Surveyor shall be three thousand five hundred dollars per annum.

SEC. 12. *And be it further enacted*, That the quantity of two entire townships, or seventy-two sections, shall be and the same is hereby granted to the State of California for the use of a seminary of learning, said lands to be selected by the Governor of the State, or any person he may designate for that purpose, in legal subdivisions of not less than a quarter-section of any of the unsold, unoccupied, and unappropriated public lands therein, subject to the approval of the Secretary of the Interior, and to be disposed of as the Legislature shall direct: *Provided however*, That no mineral lands, or lands reserved for any public purpose whatever, or lands to which any settler may be entitled under the provisions of this act, shall be subject to such selection.

SEC. 13. *And be it further enacted*, That, there shall be and is hereby granted to the State of California the quantity of ten entire sections of land, for the purpose of erecting the public buildings of that State, said lands to be selected by the Governor, or any persons he may designate, in legal subdivisions of not less than a quarter-section of any of the unsold, unoccupied, and unappropriated public lands in that State, and subject to the approval of the Secretary of the Interior: *Provided however*, That none of said selections shall be made of mineral lands or lands reserved for any public purpose whatever, or lands to which any settler may be entitled under the provisions of this act.

Approved, March 3, 1853.

No. 225.—An Act to authorize the correction of erroneous locations of military bounty land-warrants by actual settlers on the public lands in certain cases.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That where an actual settler on the public lands has sought or shall hereafter attempt to locate the land settled on and improved by him, with a military bounty land-warrant, and where, from any cause, an error has occurred in making such location, said settler shall be authorized to relinquish the land so erroneously located, and to locate such warrant upon the land so settled upon and improved by him, if the same shall then be vacant, and if not, upon any other vacant land, on making proof of those facts to the satisfaction of the land officers, according to such rules and regulations as may be prescribed by the Commissioner of the General Land Office, and subject to his final adjudication.*

SEC. 2. *And be it further enacted,* That the provisions of the act of third March, eighteen hundred and nineteen, “providing for the correction of errors in making entries of land at the land offices,” and of the act of twenty-fourth May, eighteen hundred and twenty-eight, supplementary to said act of third March, eighteen hundred and nineteen, shall be and the same are hereby made applicable to errors in the location of land-warrants.

Approved, March 3, 1853.

No. 226.—An Act to appropriate lands for the support of schools in certain townships and fractional townships in the territory of Minnesota, not before provided for.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in those townships and fractional townships in the Territory of Minnesota where sections numbered sixteen and thirty-six, or either of them, directed to be reserved for school purposes by the eighteenth section of the act approved third of March, one thousand eight hundred and forty-nine, entitled “An act to establish the Territorial Government of Minnesota,” shall be found fractional in quantity, and in those or fractional townships where no section sixteen or thirty-six shall be found therein, there shall be reserved and appropriated other land for such school purposes, to make up, in the first case, the deficiency in the quantity of said fractional sections sixteen and thirty-six, or either of them, and to give, in the second case, an equivalent for the loss of either or both said sections: *Provided,* That the mode and manner of selection and approval in both cases, and the quantity selected in the second case, shall be in accordance with the principles settled by the act approved twentieth [of] May, eighteen hundred and twenty-six, entitled “An act to appropriate lands for the support of schools in certain townships and fractional townships not before provided for.”†

Approved, March 3, 1853.

* See Nos. 11, 14, 17, 19, 149.

† See No. 169.

No. 227.—An Act to revive and continue in force for a limited time the provisions of an act relative to suspended entries of public land.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the several provisions of the act approved third August, eighteen hundred and forty-six, entitled "An act providing for the adjustment of all suspended pre-emption land claims in the several States and Territories," be and the same are hereby revived and continued in force for the term of ten years from the date hereof; and those provisions are hereby declared applicable as well to cases which were inadvertently omitted to be acted on under said act, as to those of a like character and description which have arisen between the date of said act and the present time, and shall be regarded as applying to locations by bounty land warrants, as well as to ordinary entries or sales.*

SEC. 2. *And be it further enacted,* That in all cases where patents have been issued on entries which were entitled to be confirmed under said act, such patents may be surrendered, and the officers at the time of such surrender, who by said act are constituted the board of adjudication, are hereby authorized and empowered to confirm such entries; and upon the cancelling of the outstanding patent, the Commissioner of the General Land Office is hereby authorized to issue a new patent, on such confirmation, to the persons who made such entries, to their heirs or to their assigns.

Approved, March 3, 1853.

No. 228.—An Act authorizing the sale of certain reserved lands in Alabama.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the lands lying in Clarke county, in the State of Alabama, which have been reserved from sale as cedar lands, under and by virtue of "An act making reservation of certain public lands to supply timber for naval purposes," approved March first, eighteen hundred and seventeen, shall hereafter be liable to be sold in the same manner and under the same provisions and restrictions as other public lands of the United States.

Approved, March 3, 1853.

No. 229.—An Act to continue in force the act entitled "An act to ascertain and settle the private land claims in the State of California," and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That an act entitled "An act to ascertain and settle the private land claims in the State of California," passed March third, eighteen hundred and fifty-one, be, and the same is hereby, continued in force for one year from and after the third day of March, A. D. eighteen hundred and fifty-four, for the purpose of enabling the board of commissioners appointed under said act to determine the claims presented to said board under the act aforesaid.†

* See Nos. 110, 294.

† See Nos. 189, 264.

SEC. 2. *And be it further enacted*, That the said board of commissioners may appoint one or more, not exceeding three, competent persons to act as commissioners in the taking of testimony to be used before said board, who shall receive a compensation to be fixed by said board, but not to exceed ten dollars per diem.

Approved, January 18, 1854.

No. 230.—An Act giving further time for satisfying claims for bounty lands and for other purposes.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act entitled "An act to provide for satisfying claims for bounty lands for military services in the late war with Great Britain, and for other purposes," approved July twenty-seven, eighteen hundred and forty-two, and also the two acts approved January twenty-seventh eighteen hundred and thirty-five, therein and thereby revived, shall be and the same are hereby revived and continued in force for five years, to be computed from the twenty-sixth day of June, one thousand eight hundred and fifty-three.

Approved, February 8, 1854.

No. 231.—An Act to indemnify the State of Indiana for the failure of title to a township of land granted to said State on her admission into the Union in eighteen hundred and sixteen.

Whereas by a decision of the Supreme Court of the United States, made January twenty-fifth, eighteen hundred and fifty-three, the State of Indiana has lost one out of the two townships of land granted to her for the use of a State University by act of April sixteenth [nineteenth] eighteen hundred and sixteen, and has become liable to refund to a private corporation the proceeds of said township heretofore appropriated to the support of the State University of Indiana—for remedy thereof:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the governor of the State of Indiana be authorized to select out of lands of the United States, within the said State, now subject to private entry, nineteen thousand and forty acres of land in legal subdivisions, and shall certify the same to the Secretary of the Interior, who shall, forthwith, on receipt of said certificate issue to the State of Indiana, patents for said lands: *Provided*, The proceeds of said lands, when sold, shall be, and forever remain, a fund for the use of the Indiana University.

Approved, February 23, 1854.

* See Nos. 55, 143.

No. 232.—An Act supplemental to an Act entitled “An Act to ascertain and settle the private land claims in the State of California,” approved March third, one thousand eight hundred and fifty-one.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following named persons, viz.: Henry C. Boggs, Levi W. Hardman, Wiley Sneed, Stephen Broadhurst, Smith and Kristeen, George H. Woodman, Berthald and Lorin, Fisher and Guildfildt, and William Clarke, or either of them, or their representatives, may, within six months after the passage of this act, present their claims to the commissioners who were appointed under the provisions of the act to which this is a supplement; and the said commissioners are hereby empowered to hear and dispose of the same as effectually as though the said claims had been presented in due time, under the thirteenth section of the aforesaid act.

SEC. 2. *And be it further enacted,* That the persons named in this act shall be limited and confined, in their claims, to purchases made of Don Salvador Valligo, a Mexican grantee, for a part of the place known as “Entre Napa,” and situate in Napa county, State of California. And the said commissioners shall be satisfied that the said persons named derived title to their respective claims previous to the third day of March, one thousand eight hundred and fifty-three.

SEC. 3. *And be it further enacted,* That the said persons named shall be entitled to no privilege not conferred on claimants under the original act, but as to an extension of time in which their claims may be respectively made to the said commissioners.

Approved, February 23, 1854.

No. 233.—An Act for the extension of the pre-emption privilege in the State of California.†

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of the act of the fourth of September, eighteen hundred and forty-one, granting pre-emption rights to settlers on the public lands, as modified and made applicable to the State of California by the act of the third of March, eighteen hundred and fifty-three, shall be further modified by extending the provisions of the third proviso in the sixth section of the aforesaid act of the third of March, eighteen hundred and fifty-three, to settlements made prior to and within two years after the passage of this act.

Approved, March 1, 1854.

No. 234.—An Act for the relief of settlers on lands reserved for railroad purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That every settler on public

* See No. 189.

† See Nos. 48, 224.

lands which have been or may be withdrawn from market in consequence of proposed railroads, and who had settled thereon prior to such withdrawal, shall be entitled to pre-emption at the ordinary minimum to the lands settled on and cultivated by them : *Provided*, They shall prove up their rights according to such rules and regulations as may be prescribed by the Secretary of the Interior, and pay for the same before the day that may be fixed by the President's proclamation for the restoration of said lands to market.

Approved, March 27, 1854.

No. 235.—An Act for the benefit of citizens and occupants of the town of Council Bluffs, in Iowa.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the judge of the county court, as such, for the county of Pottawattomie, in the State of Iowa, be, and he is hereby, authorized to enter at the proper land office, by paying therefor, at the rate of one dollar and twenty-five cents the acre, the west half of the southwest quarter of section thirty, the west half of the northwest quarter of section thirty-one, in township number seventy-five, north of range forty-three west; the southeast quarter and the east half of the southwest quarter of section twenty-five, and the northeast quarter and the east half of the northwest quarter of section thirty-six, in township seventy-five, north of range forty-four west, in said State of Iowa, in trust for the several use and benefit of the occupants thereof, according to their respective interests; the execution of which trust, as to the disposal of said land and the proceeds of the sales thereof, to be conducted under such rules and regulations as are prescribed by the legislative assembly of the State of Iowa in an act entitled "An act regulating the disposal of lands purchased in trust for town sites," approved January twenty-two, eighteen hundred and fifty-two, or as may hereafter be prescribed by the legislative assembly of said State of Iowa : *Provided*, That any act of said judge, not in conformity to the rules and regulations herein alluded to, shall be void and of none effect : *And provided also*, That nothing herein contained shall affect pre-emption or other rights that may have accrued under any other act of Congress.

SEC. 2. *And be it further enacted*, That the entry contemplated in this act shall be made within twelve months from the date of the passage hereof, and a patent shall issue for said land as in other cases.

Approved, April 6, 1854.

No. 236.—An Act to establish additional land districts, in the Territory of Minnesota.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, for the sale of the public lands to which the Indian title has been extinguished by the recent treaties, or which may hereafter be extinguished within their limits in the Minnesota Territory west of the Mississippi River, there is hereby created four additional land districts, bounded as follows, to wit : All that portion situ-

ated between the northern boundary of the State of Iowa, and the line which divides townships one hundred and five and one hundred and six of the fifth principal meridian, and extending from the Mississippi to the Big Sioux rivers, shall comprise one of said districts, to be called the Root River District.* All that portion lying between the township line last mentioned, and the line dividing townships one hundred and ten, and one hundred and eleven, and between said rivers, shall constitute another of said districts, to be called the Winona District. All that portion situated north of the district last mentioned, and south of the line which divides townships one hundred and fifteen, and one hundred and sixteen, and between the rivers above mentioned, except the townships recently surveyed west of the Mississippi River from the fourth principal meridian, to include the reservation at Fort Snelling, (the whole of which townships shall be attached to and constitute a part of the Minneapolis District,) shall constitute a third district to be designated the Red Wing District; and all that portion situated north of the limits last described, south of the line dividing townships one hundred and twenty and one hundred and twenty-one, between the Mississippi River and the treaty line which runs from the Big Sioux River to Lake Travers, together with all the fractional townships one hundred and twenty-one situated east of the range line dividing ranges twenty-four and twenty-five west, shall comprise the fourth district, to be known as the Minneapolis District. And all the residuary portion of said lands situated north of the line which divides townships one hundred and twenty and one hundred and twenty-one, and west of range twenty-four west of the fifth principal meridian, and west of the Mississippi River extending to the drift-wood and the Red River of the north, shall be, and is hereby attached to the district of lands subject to sale at Sauk Rapids.

SEC. 2. *And be it further enacted*, That the President of the United States be, and he is hereby, authorized to appoint, by and with the advice and consent of the Senate, a register and receiver of the public moneys for each of the said new districts hereby created, who shall respectively be required to reside at the site of their offices, and who shall have the same powers, perform the same duties, and be entitled to the same compensation, as are or may be prescribed by law in relation to other land officers of the United States.

SEC. 3. *And be it further enacted*, That the President is authorized to cause the public lands in said districts, with the exception of such as have been or may be reserved for other purposes, to be exposed to sale in the same manner and upon the same terms and conditions as the other public lands of the United States.

SEC. 4. *And be it further enacted*, That the President is hereby authorized to designate the location of the offices for said new districts, and change the same whenever in his opinion the public good shall require it.

Approved, April 12, 1854.

No. 237.—An Act establishing a land office in the lower peninsula of Michigan.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all those parts or portions of the lower peninsula of the State of Michigan which is situated north

* See No. 296.

of the line which divides townships twenty (20) and twenty-one (21) and all the portion of the upper peninsula which lies south of the line dividing townships forty-one (41) and forty-two (42) and west of range twelve (12) west, together with all the islands in Green Bay, the straits of Mackinac, and Lakes Huron and Michigan, which are situated north of the township line first herein mentioned, and within the limits of said State exclusive of Drummond's Island and its islets, be, and the same is hereby included in a land district to be called the Cheboygan Land District; and for the sale of the lands in said district there shall be a land office established at such point therein as the President shall select.

SEC. 2. *And be it further enacted*, That the President, by and with the advice and consent of the Senate, shall appoint one register and one receiver for the land office in said district, who shall reside at the place designated for the land office, receive such compensation, give security and discharge all duties pertaining to such office, as are prescribed by law.

Approved, April 20, 1854.

No. 238.—An Act to authorize the school commissioners of fractional township number one, of range number ten east, in Alabama, to locate one-half section of land for school purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the school commissioners of fractional township number one, of range number ten east, situated in the district of land subject to sale at Lebanon, Alabama, be, and is hereby authorized to enter, free of charge, in lieu of the lands to which they are entitled by any existing law, one-half section of land in legal subdivision, anywhere in said township, with a view to the ultimate convenience of the citizens of said township, and the quality of soil for school purposes, and said lands thus located shall be governed by the same laws, rules, and regulations, as is the school sixteenth section in said State of Alabama.

SEC. 2. *And be it further enacted*, That it shall be the duty of said school commissioners to locate and report, within two years, what lands they have entered, to the Commissioner of the General Land Office at Washington, and it shall be his duty, upon the receipt of such report of location, to withdraw from sale the said lands, and the title thereto shall be valid as in sixteenth sections heretofore granted in the new States.

Approved, April 20, 1854.

No. 239.—An Act to organize the Territories of Nebraska and Kansas.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all that part of the territory of the United States included within the following limits, except such portions thereof as are hereinafter expressly exempted from the operations of this act, to wit: beginning at a point in the Missouri River where the fortieth parallel of north latitude crosses the same; thence west on said parallel to the east boundary of the Territory of Utah, on the summit of

* The acts relating to public lands in Nebraska only given. That part organizing Kansas given entire, which also applies to Nebraska, *mutatis mutandis*.

the Rocky Mountains; thence on said summit northward to the forty-ninth parallel of north latitude; thence east on said parallel to the western boundary of the Territory of Minnesota; thence southward on said boundary to the Missouri River; thence down the main channel of said river to the place of beginning, be, and the same is hereby, created into a temporary government by the name of the Territory of Nebraska; and when admitted as a State or States, the said Territory, or any portion of the same, shall be received into the Union with or without slavery, as their constitution may prescribe at the time of their admission: *Provided*, That nothing in this act contained shall be construed to inhibit the Government of the United States from dividing said Territory into two or more Territories, in such manner and at such times as Congress shall deem convenient and proper, or from attaching any portion of said Territory to any other State or Territory of the United States: *Provided further*, That nothing in this act contained shall be construed to impair the rights of person or property now pertaining to the Indians in said Territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to include any territory which, by treaty with any Indian tribe, is not, without the consent of said tribe, to be included within the territorial limits or jurisdiction of any State or Territory; but all such territory shall be excepted out of the boundaries, and constitute no part of the Territory of Nebraska, until said tribe shall signify their assent to the President of the United States to be included within the said Territory of Nebraska, or to affect the authority of the Government of the United States to make any regulations respecting such Indians, their lands, property, or other rights, by treaty, law, or otherwise, which it would have been competent to the government to make if this act had never passed.

* * * * *

SEC. 6. *And be it further enacted*, That the legislative power of the Territory shall extend to all rightful subjects of legislation consistent with the Constitution of the United States, and the provisions of this act; but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents.

* * * * *

SEC. 14. *And be it further enacted*, That a delegate to the House of Representatives of the United States, to serve for the term of two years, who shall be a citizen of the United States, may be elected by the voters qualified to elect members of the Legislative Assembly, who shall be entitled to the same rights and privileges as are exercised and enjoyed by the delegates from the several other Territories of the United States to the said House of Representatives, but the delegate first elected shall hold his seat only during the term of the Congress to which he shall be elected. The first election shall be held at such time and places, and be conducted in such manner, as the Governor shall appoint and direct; and at all subsequent elections the times, places, and manner of holding the elections, shall be prescribed by law. The person having the greatest number of votes shall be declared by the Governor to be duly elected; and a certificate thereof shall be given accordingly. That the Constitution, and all Laws of the United States which are not locally inapplicable, shall have the same force and effect within the said Territory of Nebraska as elsewhere within the United States, except the eighth section of the act preparatory to the admission of Missouri into the Union, approved March sixth, eighteen hundred and twenty, which, being inconsistent with the

principle of non-intervention by Congress with slavery in the States and Territories, as recognized by the legislation of eighteen hundred and fifty, commonly called the Compromise Measures, is hereby declared inoperative and void; it being the true intent and meaning of this act not to legislate slavery into any Territory or State, nor to exclude it therefrom, but to leave the people thereof perfectly free to form and regulate their domestic institutions in their own way, subject only to the Constitution of the United States: *Provided*, That nothing herein contained shall be construed to revive or put in force any law or regulation which may have existed prior to the act of sixth March, eighteen hundred and twenty, either protecting, establishing, prohibiting, or abolishing slavery.

* * * * *

SEC. 16. *And be it further enacted*, That when the lands in the said Territory shall be surveyed under the direction of the government of the United States, preparatory to bringing the same into market, sections numbered sixteen and thirty-six in each township in said Territory shall be, and the same are hereby, reserved for the purpose of being applied to schools in said Territory, and in the States and Territories hereafter to be erected out of the same.

* * * * *

SEC. 19. *And be it further enacted*, That all that part of the Territory of the United States included within the following limits, except such portions thereof as are hereinafter expressly exempted from the operations of this act, to wit, beginning at a point on the western boundary of the State of Missouri, where the thirty-seventh parallel of north latitude crosses the same; thence west on said parallel to the eastern boundary of New Mexico; thence north on said boundary to latitude thirty-eight; thence following said boundary westward to the east boundary of the Territory of Utah, on the summit of the Rocky Mountains; thence northward on said summit to the fortieth parallel of latitude; thence east on said parallel to the western boundary of the State of Missouri; thence south with the western boundary of said State to the place of beginning, be, and the same is hereby, created into a temporary government by the name of the Territory of Kansas; and when admitted as a State or States, the said Territory, or any portion of the same, shall be received into the Union with or without slavery, as their Constitution may prescribe at the time of their admission: *Provided*, That nothing in this act contained shall be construed to inhibit the government of the United States from dividing said Territory into two or more Territories, in such manner and at such times as Congress shall deem convenient and proper, or from attaching any portion of said Territory to any other State or Territory of the United States: *Provided further*, That nothing in this act contained shall be construed to impair the rights of person or property now pertaining to the Indians in said Territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to include any Territory which, by treaty with any Indian tribe, is not, without the consent of said tribe, to be included within the territorial limits or jurisdiction of any State or Territory; but all such territory shall be excepted out of the boundaries, and constitute no part of the Territory of Kansas, until said tribe shall signify their assent to the President of the United States to be included within the said Territory of Kansas, or to affect the authority of the government of the United States to make any regulation respecting such Indians, their lands, property, or other rights, by treaty, law, or otherwise, which it would have been competent to the government to make if this act had never passed.

SEC. 20. *And be it further enacted*, That the executive power and au-

thority in and over said Territory of Kansas shall be vested in a governor, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the President of the United States. The Governor shall reside within said Territory, and shall be commander-in-chief of the militia thereof. He may grant pardons and respites for offences against the laws of said Territory, and reprieves for offences against the laws of the United States, until the decision of the President can be made known thereon; he shall commission all officers who shall be appointed to office under the laws of the said Territory, and shall take care that the laws be faithfully executed.

SEC. 21. *And be it further enacted*, That there shall be a Secretary of said Territory, who shall reside therein, and hold his office for five years, unless sooner removed by the President of the United States; he shall record and preserve all the laws and proceedings of the Legislative Assembly hereinafter constituted, and all the acts and proceedings of the Governor in his Executive Department; he shall transmit one copy of the laws and journals of the Legislative Assembly within thirty days after the end of each session, and one copy of the executive proceedings and official correspondence semi-annually on the first days of January and July in each year, to the President of the United States, and two copies of the laws to the President of the Senate and to the Speaker of the House of Representatives, to be deposited in the libraries of Congress; and, in case of the death, removal, resignation, or absence of the Governor from the Territory, the Secretary shall be, and he is hereby, authorized and required to execute and perform all the powers and duties of the Governor during such vacancy or absence, or until another Governor shall be duly appointed and qualified to fill such vacancy.

SEC. 22. *And be it further enacted*, That the legislative power and authority of said Territory shall be vested in the Governor and a Legislative Assembly. The legislative Assembly shall consist of a Council and House of Representatives. The Council shall consist of thirteen members, having the qualifications, of voters, as hereinafter prescribed, whose term of service shall continue two years. The House of Representatives shall, at its first session, consist of twenty-six members, possessing the same qualifications as prescribed for members of the Council, and whose term of service shall continue one year. The number of representatives may be increased by the Legislative Assembly, from time to time, in proportion to the increase of qualified voters: *Provided*, That the whole number shall never exceed thirty-nine. An apportionment shall be made, as nearly equal as practicable, among the several counties or districts, for the election of the Council and Representatives, giving to each section of the Territory representation in the ratio of its qualified voters as nearly as may be. And the members of the Council and of the House of Representatives shall reside in, and be inhabitants of, the district or county, or counties, for which they may be elected, respectively. Previous to the first election, the Governor shall cause a census, or enumeration of the inhabitants and qualified voters of the several counties and districts of the Territory, to be taken by such persons and in such mode as the Governor shall designate and appoint; and the persons so appointed shall receive a reasonable compensation therefor. And the first election shall be held at such time and places, and be conducted in such manner, both as to the persons who shall superintend such election and the returns thereof, as the Governor shall appoint and direct; and he shall at the same time declare the number of members of the Council and House of Representatives to which each of the counties or districts shall be entitled under this act. The persons having the highest number of legal

votes in each of said Council Districts for members of the Council, shall be declared by the Governor to be duly elected to the Council; and the persons having the highest number of legal votes for the House of Representatives, shall be declared by the Governor to be duly elected members of said house: *Provided*, That in case two or more persons voted for shall have an equal number of votes, and in case a vacancy shall otherwise occur in either branch of the Legislative Assembly, the Governor shall order a new election; and the persons thus elected to the Legislative Assembly shall meet at such place and on such day as the Governor shall appoint; but thereafter, the time, place, and manner of holding and conducting all elections by the people, and the apportioning the representation in the several counties or districts to the Council and House of Representatives, according to the number of qualified voters, shall be prescribed by law, as well as the day of the commencement of the regular sessions of the Legislative Assembly: *Provided*, That no session in any one year shall exceed the term of forty days, except the first session, which may continue sixty days.

SEC. 23. *And be it further enacted*, That every free white male inhabitant above the age of twenty-one years, who shall be an actual resident of said Territory, and shall possess the qualifications hereinafter prescribed, shall be entitled to vote at the first election, and shall be eligible to any office within the said Territory; but the qualifications of voters, and of holding office, at all subsequent elections, shall be such as shall be prescribed by the Legislative Assembly: *Provided*, That the right of suffrage and of holding office shall be exercised only by citizens of the United States, and those who shall have declared, on oath, their intention to become such, and shall have taken an oath to support the Constitution of the United States and the provisions of this act: *And provided further*, That no officer, soldier, seaman, or marine, or other person in the army or navy of the United States, or attached to troops in the service of the United States, shall be allowed to vote or hold office in said Territory by reason of being on service therein.

SEC. 24. *And be it further enacted*, That the legislative power of the Territory shall extend to all rightful subjects of legislation consistent with the Constitution of the United States and the provisions of this act; but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents. Every bill which shall have passed the Council and House of Representatives of the said Territory shall, before it become a law, be presented to the Governor of the Territory; if he approve, he shall sign it; but if not, he shall return it with his objections to the house in which it originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and, if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, to be entered on the journal of each house, respectively. If any bill shall not be returned by the Governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Assembly, by adjournment, prevent its return, in which case it shall not be a law.

SEC. 25. *And be it further enacted*, That all township, district, and

county officers, not herein otherwise provided for, shall be appointed or elected as the case may be, in such manner as shall be provided by the Governor and Legislative Assembly of the Territory of Kansas. The Governor shall nominate, and, by and with the advice and consent of the Legislative Council, appoint all officers not herein otherwise provided for; and, in the first instance, the Governor alone may appoint all said officers, who shall hold their offices until the end of the first session of the Legislative Assembly; and shall lay off the necessary districts for members of the Council and House of Representatives, and all other officers.

SEC. 26. *And be it further enacted*, That no member of the Legislative Assembly shall hold, or be appointed to, any office which shall have been created, or the salary or emoluments of which shall have been increased, while he was a member, during the term for which he was elected, and for one year after the expiration of such term; but this restriction shall not be applicable to members of the first Legislative Assembly; and no person holding a commission or appointment under the United States, except postmasters, shall be a member of the Legislative Assembly, or shall hold any office under the government of said Territory.

SEC. 27. *And be it further enacted*, That the judicial power of said Territory shall be vested in a supreme court, district courts, probate courts, and in justices of the peace. The Supreme Court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and who shall hold a term at the seat of government of said Territory annually; and they shall hold their offices during the period of four years, and until their successors shall be appointed and qualified. The said Territory shall be divided into three judicial districts, and a district court shall be held in each of said districts by one of the justices of the Supreme Court, at such times and places as may be prescribed by law; and the said judges shall, after their appointments, respectively, reside in the districts which shall be assigned them. The jurisdiction of the several courts herein provided for, both appellate and original, and that of the probate courts and of justices of the peace, shall be as limited by law: *Provided*, That justices of the peace shall not have jurisdiction of any matter in controversy when the title or boundaries of land may be in dispute, or where the debt or sum claimed shall exceed one hundred dollars; and the said supreme and district courts, respectively, shall possess chancery as well as common law jurisdiction. Each District Court, or the judge thereof, shall appoint its clerk, who shall also be the register in chancery, and shall keep his office at the place where the court may be held. Writs of error, bills of exception, and appeals, shall be allowed in all cases from the final decisions of said district courts to the Supreme Court, under such regulations as may be prescribed by law; but in no case removed to the Supreme Court shall trial by jury be allowed in said court. The Supreme Court, or the justices thereof, shall appoint its own clerk, and every clerk shall hold his office at the pleasure of the court for which he shall have been appointed. Writs of error, and appeals from the final decisions of said supreme court, shall be allowed, and may be taken to the Supreme Court of the United States, in the same manner and under the same regulations as from the Circuit Courts of the United States, where the value of the property, or the amount in controversy, to be ascertained by the oath or affirmation of either party, or other competent witness, shall exceed one thousand dollars; except only that in all cases involving title to slaves, the said writs of error or appeals shall be allowed and decided by said supreme court, without regard to the value of the matter, property, or title in controversy; and except also that a writ of error or appeal shall also be allowed to the Su-

preme Court of the United States, from the decision of the said supreme court created by this act, or of any judge thereof, or of the district courts created by this act, or of any judge thereof, upon any writ of habeas corpus, involving the question of personal freedom: *Provided*, That nothing herein contained shall be construed to apply to or affect the provisions of the "act respecting fugitives from justice, and persons escaping from the service of their masters," approved February twelfth, seventeen hundred and ninety-three, and the "act to amend and supplementary to the aforesaid act," approved September eighteenth, eighteen hundred and fifty; and each of the said district courts shall have and exercise the same jurisdiction in all cases arising under the Constitution and laws of the United States as is vested in the Circuit and District Courts of the United States; and the said supreme and district courts of the said Territory, and the respective judges thereof, shall and may grant writs of habeas corpus in all cases in which the same are granted by the judges of the United States in the District of Columbia; and the first six days of every term of said courts, or so much thereof as may be necessary, shall be appropriated to the trial of causes arising under the said Constitution and laws, and writs of error and appeal in all such cases shall be made to the Supreme Court of said Territory, the same as in other cases. The said clerk shall receive the same fees in all such cases, which the clerks of the district courts of Utah Territory now receive for similar services.

SEC. 28. *And be it further enacted*, That the provisions of the act entitled "An act respecting fugitives from justice, and persons escaping from the service of their masters," approved February twelfth, seventeen hundred and ninety-three, and the provisions of the act entitled "An act to amend, and supplementary to, the aforesaid act," approved September eighteenth, eighteen hundred and fifty, be, and the same are hereby, declared to extend to and be in full force within the limits of the said Territory of Kansas.

SEC. 29. *And be it further enacted*, That there shall be appointed an attorney for said Territory, who shall continue in office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the President, and who shall receive the same fees and salary as the Attorney of the United States for the present Territory of Utah. There shall also be a marshal for the Territory appointed, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the President, and who shall execute all processes issuing from the said courts when exercising their jurisdiction as Circuit and District Courts of the United States; he shall perform the duties, be subject to the same regulations and penalties, and be entitled to the same fees, as the Marshal of the District Court of the United States for the present Territory of Utah, and shall, in addition, be paid two hundred dollars annually as a compensation for extra services.

SEC. 30. *And be it further enacted*, That the Governor, Secretary, Chief Justice, and Associate Justices, Attorney, and Marshal, shall be nominated, and, by and with the advice and consent of the Senate, appointed by the President of the United States. The Governor and Secretary to be appointed as aforesaid shall, before they act as such respectively take an oath or affirmation before the district judge or some justice of the peace in the limits of said Territory, duly authorized to administer oaths and affirmations by the laws now in force therein, or before the Chief Justice or some Associate Justice of the Supreme Court of the United States, to support the Constitution of the United States, and faithfully to discharge the duties of their respective offices, which said oaths, when so taken, shall be

certified by the person by whom the same shall have been taken ; and such certificates shall be received and recorded by the said secretary among the executive proceedings ; and the Chief Justice and Associate Justices, and all other civil officers in said Territory, before they act as such, shall take a like oath or affirmation before the said Governor or Secretary, or some Judge or Justice of the Peace of the Territory who may be duly commissioned and qualified, which said oath or affirmation shall be certified and transmitted by the person taking the same to the Secretary, to be by him recorded as aforesaid ; and, afterwards, the like oath or affirmation shall be taken, certified, and recorded, in such manner and form as may be prescribed by law. The Governor shall receive an annual salary of two thousand five hundred dollars. The Chief Justice and Associate Justices shall receive an annual salary of two thousand dollars. The Secretary shall receive an annual salary of two thousand dollars. The said salaries shall be paid quarter-yearly, from the dates of the respective appointments, at the Treasury of the United States ; but no such payment shall be made until said officers shall have entered upon the duties of their respective appointments. The members of the Legislative Assembly shall be entitled to receive three dollars each per day during their attendance at the sessions thereof, and three dollars each for every twenty miles' travel in going to and returning from the said sessions, estimated according to the nearest usually travelled route ; and an additional allowance of three dollars shall be paid to the presiding officer of each house for each day he shall so preside. And a chief clerk, one assistant clerk, a sergeant-at-arms, and door-keeper, may be chosen for each house ; and the chief clerk shall receive four dollars per day, and the said other officers three dollars per day, during the session of the Legislative Assembly ; but no other officers shall be paid by the United States : *Provided*, That there shall be but one session of the Legislature annually, unless, on an extraordinary occasion, the Governor shall think proper to call the Legislature together. There shall be appropriated, annually, the usual sum, to be expended by the Governor, to defray the contingent expenses of the Territory, including the salary of a clerk of the Executive Department, and there shall also be appropriated, annually, a sufficient sum, to be expended by the Secretary of the Territory, and upon an estimate to be made by the Secretary of the Treasury of the United States, to defray the expenses of the Legislative Assembly, the printing of the laws, and other incidental expenses ; and the Governor and Secretary of the Territory shall, in the disbursement of all moneys intrusted to them, be governed solely by the instructions of the secretary of the Treasury of the United States, and shall, semi-annually, account to the said secretary for the manner in which the aforesaid moneys shall have been expended ; and no expenditure shall be made by said Legislative Assembly for objects not specially authorized by the acts of Congress making the appropriations, nor beyond the sums thus appropriated for such objects.

SEC. 31. *And be it further enacted*, That the seat of government of said Territory is hereby located temporarily at Fort Leavenworth ; and that such portions of the public buildings as may not be actually used and needed for military purposes, may be occupied and used, under the direction of the Governor and Legislative Assembly, for such public purposes as may be required under the provisions of this act.

SEC. 32. *And be it further enacted*, That a delegate to the House of Representatives of the United States, to serve for the term of two years, who shall be a citizen of the United States, may be elected by the voters qualified to elect members of the Legislative Assembly, who shall be entitled to

the same rights and privileges as are exercised and enjoyed by the delegates from the several other Territories of the United States to the said House of Representatives, but the delegate first elected shall hold his seat only during the term of the Congress to which he shall be elected. The first election shall be held at such time and places, and be conducted in such manner, as the Governor shall appoint and direct; and at all subsequent elections, the times, places, and manner of holding the elections shall be prescribed by law. The person having the greatest number of votes shall be declared by the Governor to be duly elected, and a certificate thereof shall be given accordingly. That the Constitution, and all laws of the United States which are not locally inapplicable, shall have the same force and effect within the said Territory of Kansas as elsewhere within the United States, except the eighth section of the act preparatory to the admission of Missouri into the Union, approved March sixth, eighteen hundred and twenty, which, being inconsistent with the principle of non-intervention by Congress with slavery in the States and Territories, as recognized by the legislation of eighteen hundred and fifty, commonly called the Compromise Measures, is hereby declared inoperative and void; it being the true intent and meaning of this act not to legislate slavery into any Territory or State, nor to exclude it therefrom, but to leave the people thereof perfectly free to form and regulate their domestic institutions in their own way, subject only to the Constitution of the United States: *Provided*, That nothing herein contained shall be construed to revive or put in force any law or regulation which may have existed prior to the act of sixth of March, eighteen hundred and twenty, either protecting, establishing, prohibiting, or abolishing slavery.

SEC. 33. *And be it further enacted*, That there shall hereafter be appropriated, as has been customary for the territorial governments, a sufficient amount, to be expended under the direction of the said Governor of the Territory of Kansas, not exceeding the sums heretofore appropriated for similar objects, for the erection of suitable public buildings at the seat of government, and for the purchase of a library, to be kept at the seat of government for the use of the Governor, Legislative Assembly, Judges of the Supreme Court, Secretary, Marshal, and Attorney of said Territory, and such other persons, and under such regulations, as shall be prescribed by law.

SEC. 34. *And be it further enacted*, That when the lands in the said Territory shall be surveyed under the direction of the government of the United States, preparatory to bringing the same into market, sections numbered sixteen and thirty-six in each township in said Territory shall be, and the same are hereby, reserved for the purpose of being applied to schools in said Territory, and in the States and Territories hereafter to be erected out of the same.

SEC. 35. *And be it further enacted*, That, until otherwise provided by law, the Governor of said Territory may define the Judicial Districts of said Territory, and assign the judges who may be appointed for said Territory to the several districts; and also appoint the times and places for holding courts in the several counties or subdivisions in each of said judicial districts by proclamation, to be issued by him; but the Legislative Assembly, at their first or any subsequent session, may organize, alter, or modify such judicial districts, and assign the judges, and alter the times and places of holding the courts as to them shall seem proper and convenient.

SEC. 36. *And be it further enacted*, That all officers to be appointed by the President, by and with the advice and consent of the Senate, for the Territory of Kansas, who, by virtue of the provisions of any law now exist-

ing, or which may be enacted during the present Congress, are required to give security for moneys that may be intrusted with them for disbursement, shall give such security, at such time and place, and in such manner as the Secretary of the Treasury may prescribe.

SEC. 37. *And be it further enacted*, That all treaties, laws, and other engagements made by the government of the United States with the Indian tribes inhabiting the territories embraced within this act, shall be faithfully and rigidly observed, notwithstanding any thing contained in this act; and that the existing agencies and superintendencies of said Indians be continued with the same powers and duties which are now prescribed by law, except that the President of the United States may, at his discretion, change the location of the office of superintendent.

Approved, May 30, 1854.

No. 240.—An Act to authorize the selection of school districts in lieu of the sixteenth sections within the twelve miles square reservation, State of Alabama.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the school commissioners of township six south, range one east, townships five and six south, range two east, and townships five and six south, range three east, Huntsville District, Alabama, be, and the same are hereby, authorized to select, respectively, by legal subdivisions, from any of the surveyed public lands, the quantity as near as may be, contained in the sixteenth sections of said townships, within the Twelve Miles Square Reservation; which selections, upon being approved by the Secretary of the Interior, shall be holden by the same tenure, and upon the same terms, for the support of schools in such townships, as the sections numbered sixteen, within the said reservation would have been, had not treaty stipulations made other disposition thereof.†

Approved, June 22, 1854.

No. 241.—An Act confirming certain land claims in Louisiana, in the Bastrop grant.‡

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That such of the claims entered

* See No. 97.

† These selections were made in K. T.

‡ An Act for the relief of Jean Baptiste Comeau.—*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That Jean Baptiste Comeau, of the parish of Lafayette, in the State of Louisiana, be, and he is hereby, authorized to enter, without payment therefor, two hundred and ten acres of land, upon any of the public lands which have been surveyed, and are subject to sale by private entry in the said State, in lieu of a like quantity of land confirmed to him upon the report of the commissioners of land claims for the western district of Louisiana, of the first of May, one thousand eight hundred and fifteen, and which was subsequently sold by the United States to a certain Jean E. Lefebvre, under the provisions of the act of the twelfth of April, one thousand eight hundred and fourteen, entitled "An act for the final adjustment of land titles in the State of Louisiana and Territory of Missouri." *Provided*, The location of the land, the entry of which is here authorized, shall, as near as can be, conform to the legal divisions

in the report dated thirtieth of July, eighteen hundred and fifty-two, of the register and receiver at Monroe, Louisiana, as in their opinion ought to be confirmed, according to the principles recognized in the act of Congress of the third March, eighteen hundred and forty-one, pursuant to which the said report was made, be, and the same are hereby, confirmed for the extent and under the limitations referred to in the opinions of the said officers.

SEC. 2. *And be it further enacted*, That the confirmation by this act shall only operate as a relinquishment on the part of the United States, and shall not affect the right of adverse claimants to the same lands, nor prevent a judicial decision in regard to the same; and upon the rendition to the General Land Office of a proper plat of survey, duly approved by the Surveyor-General, for any confirmation by this act, the Commissioner shall cause a patent to be issued, if satisfied that the same is confirmed and surveyed according to the true intent of this act: *Provided*, That if in any case a claim confirmed by this act was not actually located prior to the third of March, eighteen hundred and fifty-one, no location of the same shall be made to the prejudice of any actual settler, but such floating claim may be located on any public lands in the Ouachita District, to which there may be no existing pre-emption or other valid claim, under such regulations as may be prescribed by the Commissioner of the General Land Office.

Approved, June 29, 1854.

No. 242.—An Act to aid the Territory of Minnesota in the construction of a railroad therein.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be, and is, hereby granted to the Territory of Minnesota for the purpose of aiding in the construction of a railroad from the southern line of said Territory, commencing at a point between township ranges nine and seventeen, thence by the way of St. Paul, by the most practicable route to the eastern line of said Territory in the direction of Lake Superior, every alternate section of land designated by odd numbers for six sections in width on each side of said road within said Territory, but in case it shall appear that the United States have, when the line of said road is definitely fixed by the authority aforesaid, sold any section or any part thereof granted as aforesaid, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents to be appointed by the Governor of said Territory, subject to the approval of the Secretary of the Interior, to select from the lands of the United States nearest to the tier of sections above specified, so much land in alternate sections or parts of sections, as shall be equal to such lands as the United States have sold, or to which the right of pre-emption has attached as aforesaid, which lands (thus selected in lieu of those sold, and to which pre-emption has attached as aforesaid, together with the sections or parts of sections designated by odd numbers as aforesaid, and appropriated as aforesaid,) shall be held by the Territory of Minnesota for the use and purpose aforesaid: *Provided*, That the lands to be so located

and subdivisions of the surveys of the public lands, and if the quantity located shall exceed two hundred and ten acres, the residue shall be paid for at the minimum price of public lands; and upon a return of the usual certificate to the General Land Office of the United States, a patent shall issue, as in other cases of land sold by the United States. *Approved, March 2, 1841.*

shall in no case be further than fifteen miles from the line of the road in each case, and selected for and on account of said road; *Provided further*, That the lands hereby granted shall be exclusively applied in the construction of that road for which it was granted and selected, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatever; *And provided further*, That any and all lands heretofore reserved to the United States by any act of Congress, or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement, or for any other purpose whatsoever, be, and the same are hereby reserved to the United States from the operation of this act, except so far as it may be found necessary to locate the route of said railroad through such reserved lands, in which case the right of way only shall be granted, subject to the approval of the President of the United States.

SEC. 2. *And be it further enacted*, That the sections and parts of sections of land, which by such grants shall remain to the United States, within six miles on each side of said road, shall not be sold for less than double the minimum price.

SEC. 3. *And be it further enacted*, That the said lands hereby granted to the said Territory shall be subject to the disposal of any legislature thereof, for the purpose aforesaid and no other, nor shall they enure to the benefit of any company heretofore constituted and organized, and the said railroad shall be and remain a public highway for the use of the Government of the United States, free from toll or other charge upon the transportation of any property or troops of the United States, nor shall any of said lands become subject to private entry until the same shall have been first offered at public sale at the increased price.

SEC. 4. *And be it further enacted*, That the lands hereby granted to said Territory, shall be disposed of by said Territory only in manner following, that is to say, no title shall vest in the said Territory of Minnesota, nor shall any patent issue for any part of the lands hereinbefore mentioned, until a continuous length of twenty miles of said road shall be completed through the lands hereby granted, and when the Secretary of the Interior shall be satisfied that any twenty miles of said road are completed, then a patent shall issue for a quantity of land not exceeding one hundred and twenty sections, and included within a continuous length of twenty miles of said road, and so from time to time, patents shall be issued in like manner upon the completion of each additional twenty miles of said road until it shall be completed, and if said road is not completed within ten years, no further sale shall be made, and the land unsold shall revert to the United States.

SEC. 5. *And be it further enacted*, That the United States mail shall be transported at all times on said railroad under the direction of the Post-Office Department at such price as Congress may by law direct: *Provided*, That until such price is fixed by law, the Postmaster-General shall have the power to determine the same.*

Approved, June 29, 1854.

* Repealed. See No. 253.

No. 243.—An Act to authorize the President of the United States to cause to be surveyed the tract of land in the Territory of Minnesota, belonging to the half-breeds or mixed-bloods of the Dacotah or Sioux nation of Indians, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President be, and he is hereby, authorized, to exchange with the half-breeds or mixed-bloods of the Dacotah or Sioux nation of Indians, who are entitled to an interest therein, for the tract of land lying on the west side of Lake Pepin and the Mississippi River, in the Territory of Minnesota, which was set apart and granted for their use and benefit, by the ninth article of the Treaty of Prairie du Chien, of the fifteenth day of July, one thousand eight hundred and thirty;* and for that purpose he is hereby authorized to cause to be issued to said persons, on the execution by them, or by the legal representatives of such as may be minors, of a full and complete relinquishment by them to the United States of all their right, title, and interest, according to such form as shall be prescribed by the Commissioner of the General Land Office, in and to said tract of land or reservation, certificates or scrip for the same amount of land to which each individual would be entitled in case of a division of the said grant or reservation *pro rata* among the claimants—which said certificates or scrip may be located upon any of the lands within said reservation not now occupied by actual and bona fide settlers of the half-breeds or mixed-bloods, or such other persons as have gone into said Territory by authority of law, or upon any other unoccupied lands subject to pre-emption or private sale, or upon any other unsurveyed lands, not reserved by Government, upon which they have respectively made improvements: *Provided*, That said certificates or scrip shall not embrace more than six hundred and forty, nor less than forty acres each, and provided that the same shall be equally apportioned, as nearly as practicable, among those entitled to an interest in said reservation: *And provided further*, That no transfer or conveyance of any of said certificates or scrip shall be valid.

SEC. 2. *And be it further enacted*, That the President be, and he is hereby authorized, to cause to be ascertained the number and names of the half-breeds or mixed-bloods who are entitled to participate in the benefits of the said grant or reservation as aforesaid, before the issue of the certificates or scrip provided for in the preceding section.

SEC. 3. *And be it further enacted*, That from and after the passage of this act, the President is authorized to have the lands within the said reserve surveyed and exposed to public sale at the Land Offices for the districts in which said lands may lie, according to the boundaries of the several land districts recently established by Congress, in the same manner as other public lands.

Approved, July 17, 1854.

* See No. 280. Amended, No. 330.

No. 244.—An Act to amend the act approved September twenty-seven, eighteen hundred and fifty, to create the office of Surveyor-General of the public lands in Oregon, etc., and also the act amendatory thereof, approved February nineteen [fourteenth] eighteen hundred and fifty-three.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the donations hereafter to be surveyed in Oregon and Washington Territories, claimed under any of the provisions of the act to create the office of Surveyor-General of the Public Lands in Oregon, etc., approved September twenty-seven, eighteen hundred and fifty, shall in no case include a town site, or lands settled upon for purposes of business or trade, and not for agriculture; and all legal subdivisions included in whole or in part in such town sites, or settled upon for purposes of business or trade, and not for agriculture, shall be subject to the operations of the act of May twenty-three, eighteen hundred and forty-four,† “for the relief of citizens of towns upon lands of the United States, under certain circumstances,” whether such settlements were made before or after the surveys: *Provided however,* That the period of two years’ occupancy required of settlers, before they can purchase the lands claimed by them under the provisions of the first section of the act of February fourteen, eighteen hundred and fifty-three, above mentioned, shall be, and the same is hereby, reduced to one year.

SEC. 2. *And be it further enacted,* That the proviso to the fourth section of the act of twenty-seventh September, eighteen hundred and fifty, above mentioned, by which all contracts for the sale of lands claimed under that law, before the issue of the patents therefor, are declared void, shall be, and the same is hereby, repealed: *Provided,* That no sale shall be deemed valid, unless the vendor shall have resided four years upon the land.

SEC. 3. *And be it further enacted,* That the pre-emption privilege granted by the act of fourth September, eighteen hundred and forty-one, shall be, and the same is hereby extended to the lands in Oregon and Washington Territories, whether surveyed or unsurveyed, not rightfully claimed, entered, or reserved, under the provisions of this act, or the acts of which it is amendatory, nor excluded by the terms of the said act of eighteen hundred and forty-one,‡ with the exception of unsurveyed lands as above mentioned; and all settlers on unsurveyed lands in said Territories shall give notice to the Surveyor-General, or other duly authorized officer, of the particular tract claimed under this section, within six months after the survey of such lands is made and returned. And all persons claiming donations under this act, or the acts of which it is amendatory, shall in like manner give notice to the Surveyor-General, or other duly authorized officer, of the particular lands claimed as such donations, within thirty days after being requested to do so by such officer; and failing such notice in either case, the claimant or claimants shall forfeit all right and claim thereto: *Provided however,* That the time limited by the sixth section of the act of eighteen hundred and fifty-three, in which claimants under the act of eighteen hundred and fifty are required to give notice of their claims, shall be, and the same is hereby extended to the first of December, eighteen hundred and fifty-five, except in cases where the Surveyor-General shall request them so to do, as above provided.

SEC. 4. *And be it further enacted,* That, in lieu of the two townships of land granted to the Territory of Oregon by the tenth section of the act of eighteen hundred and fifty, for universities, there shall be reserved to

* See Nos. 181, 218.

† See No. 79.

‡ See No. 48.

each of the Territories of Washington and Oregon two townships of land of thirty-six sections each, to be selected in legal subdivisions, for university purposes, under the direction of the Legislatures of said Territories, respectively.

SEC. 5. *And be it further enacted*, That in any case where orphans have been, or may be, left in either of the said Territories; whose parents, or either of them, if living, would have been entitled to a donation under this act, or either of those of which it is amendatory, said orphans shall be entitled to a quarter-section of land on due proof being made to the satisfaction of the Surveyor-General, subject to the decision of the Secretary of the Interior. Said land to be set off to them by the Surveyor-General in good agricultural land, not reserved, or otherwise appropriated, under any law of Congress; and, in case of the death of either or any of said orphans, after their lands shall have been designated by the Surveyor-General, the right or rights of the deceased shall vest in the survivor or survivors.

SEC. 6. *And be it further enacted*, That all the provisions of this act, and the acts of which it is amendatory, shall be extended to all the lands in Oregon and Washington Territories; and, for the purpose of carrying said acts into effect in said Territories, the President shall be, and he is hereby, authorized to appoint a Register and Receiver for each of said Territories, whose powers, duties, obligations, and responsibilities, shall be the same as are now prescribed by law for other land officers and for the Surveyor-General of Oregon, so far as they apply to such officers. They shall keep their offices at such place as the President shall, from time to time direct; and their compensation shall be twenty-five hundred dollars each, per annum and office rent;* but they shall be entitled to no fees or other emoluments of any kind whatsoever, except the Receiver's actual and necessary expenses in depositing; and, on satisfactory proof that either of said officers, or any other officer, has charged or received fees or other rewards not authorized by law, he shall be forthwith removed from office.

SEC. 7. *And be it further enacted*, That the Territory of Washington shall be erected into a separate surveying district, and the President of the United States is hereby authorized to appoint a Surveyor-General for the same, who shall hold his office at such place as the President may direct, and the location thereof may be changed from time to time, if, in the judgment of the President, the public interest should require it, and the powers, duties, obligations, responsibilities, and emoluments of the said Surveyor-General shall be the same as are now prescribed by law for the Surveyor-General of Oregon.

Approved, July 17, 1854.

No. 245.—An Act to establish the offices of surveyor-general of New Mexico, Kansas, and Nebraska, to grant donations to actual settlers therein, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President, by and with the advice and consent of the Senate, shall be, and he is hereby, authorized to appoint a Surveyor-General for New Mexico, whose annual salary shall be three thousand dollars, and whose power, authority, and duties shall be the same as those provided by law for the Surveyor-General

* Additional district formed. See No. 266.

of Oregon; he shall have proper allowances for clerk hire, office rent, and fuel, not exceeding what now is or hereafter may be allowed by law to the said Surveyor-General of Oregon; and he shall locate his office from time to time at such places as may be directed by the President of the United States.

SEC. 2. *And be it further enacted*, That, to every white male citizen of the United States, or every white male above the age of twenty-one years who has declared his intention to become a citizen, and who was residing in said Territory prior to the first day of January, eighteen hundred and fifty-three, and who may be still residing there, there shall be, and hereby is, donated one quarter section, or one hundred and sixty acres of land. And to every white male citizen of the United States, or every white male above the age of twenty-one years, who has declared his intention to become a citizen, and who shall have removed or shall remove to and settle in said Territory between the first day of January, eighteen hundred and fifty-three, and the first day of January, eighteen hundred and fifty-eight, there shall in like manner be donated one quarter section, or one hundred and sixty acres, on condition of actual settlement and cultivation for not less than four years: *Provided however*, That each of said donations shall include the actual settlement and improvement of the donee, and shall be selected by legal subdivisions, within three months after the survey of the land where the settlement was made before the survey; and where the settlement was made after the survey, then within three months after the settlement has been made; and all persons failing to designate the boundaries of their claims within that time, shall forfeit all right to the same.

SEC. 3. *And be it further enacted*, That, on proof of the settlement and cultivation required by this act, to the satisfaction of the surveyor-general, or other officer designated by law for that purpose, subject to the supervision of the Secretary of the Interior, a certificate shall be issued to the party entitled, on presentation of which, if approved by the Secretary of the Interior, a patent shall issue thereon; *Provided however*, That on the death of any such settler before the completion of the four years' occupancy and cultivation required by this act, the right shall descend to his heirs at law, who shall be entitled to a certificate and patent, as aforesaid, on proof, as before provided, of continued occupancy and cultivation by such settler to the time of his death: *Provided however*, That when lands are claimed under any of the provisions of this act by persons who are not citizens of the United States, patents shall not issue therefor until they become citizens.

SEC. 4. *And be it further enacted*, That none of the provisions of this act shall extend to mineral or school lands, salines, military or other reservations, or lands settled on and occupied for purposes of trade and commerce, and not for agriculture, and all legal subdivisions settled on and occupied, in whole or in part, for purposes of trade and commerce, and not for agriculture, shall be subject to the provisions of the act of twenty-third of May, eighteen hundred and forty four, in relation to town sites on the public lands, whether so settled and occupied before or after the survey of said lands, except that said lands shall be donated instead of being sold.

SEC. 5. *And be it further enacted*, That when the lands in the said Territory shall be surveyed, under the direction of the Government of the United States, preparatory to bringing the same into market, sections numbered sixteen and thirty-six in each township, in said Territory, shall be, and the same are hereby, reserved for the purpose of being applied to schools in said Territory, and in the States and Territories hereafter to be created out of the same.

SEC. 6. *And be it further enacted*, That, when the lands in said Territory shall be surveyed as aforesaid, a quantity of land equal to two townships shall be, and the same is hereby, reserved for the establishment of a University in said Territory, and in the State hereafter to be created out of the same, to be selected, under the direction of the legislature, in legal subdivisions of not less than one half-section.

SEC. 7. *And be it further enacted*, That any of the lands not taken under the provisions of this act shall be subject to the operation of the Pre-emption Act of fourth September, eighteen hundred and forty-one, whether settled upon before or after the survey; and, in all cases where the settlement was made before the survey, the settler shall file his declaration within three months after the survey is made and returned; and any person claiming a donation under this act shall be permitted to enter the land claimed by him at any time prior to the four years' occupancy and cultivation required, by paying therefor at the rate of one dollar and twenty-five cents per acre, and proving occupancy and cultivation up to the time of such payment.

SEC. 8. *And be it further enacted*, That it shall be the duty of the Surveyor-General, under such instructions as may be given by the Secretary of the Interior, to ascertain the origin, nature, character, and extent of all claims to lands under the laws, usages, and customs of Spain and Mexico; and, for this purpose, may issue notices, summons witnesses, administer oaths, and do and perform all other necessary acts in the premises. He shall make a full report on all such claims as originated before the cession of the territory to the United States by the treaty of Guadalupe Hidalgo, of eighteen hundred and forty-eight, denoting the various grades of title, with his decision as to the validity or invalidity of each of the same under the laws, usages, and customs of the country before its cession to the United States; and shall also make a report in regard to all pueblos existing in the Territory, showing the extent and locality of each, stating the number of inhabitants in the said pueblos, respectively, and the nature of their titles to the land. Such report to be made according to the form which may be prescribed by the Secretary of the Interior; which report shall be laid before Congress for such action thereon as may be deemed just and proper, with a view to confirm *bonâ fide* grants, and give full effect to the treaty of eighteen hundred and forty-eight between the United States and Mexico; and, until the final action of Congress on such claims, all lands covered thereby shall be reserved from sale or other disposal by the government, and shall not be subject to the donations granted by the previous provisions of this act.

SEC. 9. *And be it further enacted*, That full power and authority are hereby given the Secretary of the Interior to issue all needful rules and regulations for fully carrying into effect the several provisions of this act.

SEC. 10. *And be it further enacted*, That the President of the United States shall be and he is hereby, authorized to appoint, by and with the advice and consent of the Senate, a Surveyor-General for the Territories of Nebraska and Kansas, who shall locate his office at such place as the President of the United States shall from time to time direct, and whose duties, powers, obligations and responsibilities and compensation shall be the same as those of the Surveyor-General of Wisconsin and Iowa, and who shall be allowed the same amount for office rent, fuel, incidental expenses, and clerk hire, as is allowed to said Surveyor-General of Wisconsin and Iowa.

SEC. 11. *And be it further enacted*, That said Surveyor-General shall cause the necessary surveys to be made in said Territories of standard

meridian, base, and parallel lines, and of township and subdivisional lines, under such rules and regulations as shall be prescribed by the Commissioner of the General Land Office.

SEC. 12. *And be it further enacted*, That all the lands to which the Indian title has been or shall be extinguished within said Territories of Nebraska and Kansas, shall be subject to the operations of the Pre-emption Act of fourth September, eighteen hundred and forty-one, and under the conditions, restrictions, and stipulations therein mentioned; *Provided however*, That where unsurveyed lands are claimed by pre-emption, notice of the specific tracts claimed shall be filed within three months after the survey has been made in the field, and on failure to file such notice or to pay for the tracts claimed before the day fixed for the public sale of the lands by the proclamation of the President of the United States, the parties claiming such lands shall forfeit all right thereto: *Provided*, said notices may be filed with the Surveyor-General, and to be noted by him on the township plats, until other arrangements shall have been made by law for that purpose.*

SEC. 13. *And be it further enacted*, That the public lands in the Territory of Nebraska, to which the Indian title shall have been extinguished, shall constitute a new land district to be called the Omaha District; and the public lands in the Territory of Kansas, to which the Indian title shall have been extinguished, shall constitute a new land district, to be called the Pawnee District: the officers for each of which districts shall be established at such points as the President may deem expedient; and he is hereby authorized to appoint, by and with the advice and consent of the Senate, a Register and Receiver of Public Moneys for each of said districts, who shall each be required to reside at the site of their respective offices, and they shall have the same powers, perform the same duties, and be entitled to the same compensation as are or may be prescribed by law in relation to other land-offices of the United States. And the President is hereby authorized to cause the surveyed lands to be exposed for sale from time to time, in the same manner and upon the same terms and conditions as the other public lands of the United States.

Approved, July 22, 1854.

No. 246.—An Act to ascertain and adjust the titles to certain lands in the State of Indiana.†

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the register and receiver of the land-office at Vincennes, together with a fit and proper person, learned in the law, and a citizen of Indiana, to be appointed by the President of the United States, are hereby constituted commissioners to ascertain and adjust the title of any claimant to any tract of land, or any part or subdivision thereof, granted by the resolve of Congress of the twenty-ninth of August, seventeen hundred and eighty-eight, and the act of the third of March, seventeen hundred and ninety-one, entitled "An act for granting lands to the inhabitants and settlers at Vincennes, and the Illinois country in the territory northwest of the Ohio, and for confirming them in

* See No. 310.

† See Nos. 265, 322.

their possessions," and the several acts in aid of, and supplementary thereto.

SEC. 2. *And be it further enacted*, That every such claimant to any tract of land so granted, or any part or subdivision thereof, shall, within six months after the publication of the notice hereinafter provided for, file his claim in writing, with the said register, in which he shall specifically set forth such facts as shall be required in the instructions of the Commissioner of the General Land Office.

SEC. 3. *And be it further enacted*, That such register, upon the receipt of such instructions, shall give notice by publication in some newspaper of general circulation in the vicinity of the said lands of his readiness to receive applications of claimants, to which notice shall be attached the instructions of the said commissioner.

SEC. 4. *And be it further enacted*, That such commissioners shall meet immediately after the time allowed for filing such claims, and shall hold their sessions at the town of Vincennes. They shall have power to compel the attendance of witnesses, administer all necessary oaths, and to hear and decide in a summary manner all matters respecting such claims. Minutes of the proceedings, decisions, meetings, and adjournments of the said board, shall be regularly entered by the register in a book kept for that purpose, together with the evidence adduced in each particular case, upon which their decisions have been made.

SEC. 5. *And be it further enacted*, That every claimant to any tract of land so granted, or any part, or subdivision thereof, who can produce to such commissioners a regular chain of title from the original confirmee to himself, or who can show to their satisfaction a continuous and connected possession in himself and those under whom he claims, for a period of twenty years or more, next preceding the filing of his claim, or can show such a claim or title as would, in the courts of Indiana, bar an action of ejectment, such claimant shall be confirmed in his title.

SEC. 6. *And be it further enacted*, That said commissioners shall, on or before the first day of September, eighteen hundred and fifty-five, transmit to the Commissioner of the General Land Office a transcript of their decisions in favor of claimants, which shall contain a fair statement of the evidence on which each respective claim is founded; and also a transcript of their decisions against claimants, with a like statement of the evidence and the reason of such rejection.

SEC. 7. *And be it further enacted*, That the Commissioner of the General Land Office, upon the receipt of such transcript, shall issue a patent to each claimant so confirmed in his title by the said commissioners; and where any such claims have been rejected, the said commissioner, upon application of the proper person, shall have power to revise such decision of the said board, and may, if in his opinion the evidence warrants it, reverse such decision, and issue a patent therefor to such claimant: *Provided*, That this right to revise shall not extend to those claims rejected, where the same lands have been confirmed by the said board to some other claimant: *And provided further*, That the patents so issued shall only be a relinquishment of the title of the United States, and shall not be construed into an abridgment of the rights of third persons.

SEC. 8. *And be it further enacted*, That the commissioner appointed by the President, shall receive a compensation of eight dollars per day, for each and every day he may be engaged in the discharge of the duties imposed by this act, and the register and receiver shall receive such compensation for their services, as may be just and proper in the discretion of the Commissioner of the General Land Office.

SEC. 9. *And be it further enacted*, That it shall be the duty of the Commissioner of the General Land Office to prescribe such rules and regulations as may be necessary to give full effect to the provisions of this act.

Approved, July 27, 1854.

No. 247.—An Act to authorize the State of Illinois to select the residue of the lands to which she is entitled under the act of second of March, eighteen hundred and twenty-seven, granting land to aid that State in opening a canal to connect the waters of the Illinois river with those of Lake Michigan.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Governor of the State of Illinois is hereby authorized to cause to be selected, the balance of the land to which that State is entitled under the provisions of the act of the second of March, eighteen hundred and twenty-seven, granting land to aid that State in opening a canal to connect the waters of the Illinois River with those of Lake Michigan, out of any of the unsold public land in the State subject to private entry at one dollar and twenty-five cents per acre, and not claimed by pre-emption, the quantity to be ascertained upon the principles which governed the final adjustment of the grant to the State of Indiana for the Wabash and Erie Canal, under the provisions of the act of Congress approved the ninth of May, eighteen hundred and forty-eight.

Approved, August 3, 1854.

No. 248.—An Act to authorize the State of Wisconsin to select the residue of the lands to which she is entitled under the act of eighth of August, eighteen hundred and forty-six, for the improvement of the Fox and Wisconsin rivers.†

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, the Governor of the State of Wisconsin is hereby authorized to cause to be selected the balance of the land to which that State is entitled under the provisions of the act of the eighth August, eighteen hundred and forty-six,‡ granting land to aid the Territory of Wisconsin in the improvement of the Fox and Wisconsin Rivers and to connect the same by a canal, out of any of the unsold public lands in said State, subject to private entry, at one dollar and twenty-five cents per acre, and not claimed by pre-emption; the quantity to be ascertained upon the principles which governed the final adjustment of the grant to the State of Indiana for the Wabash and Erie Canal, under the provisions of the act of Congress approved the ninth of May, eighteen hundred and forty-eight.

Approved, August 3, 1854.

* See Nos. 45, 136.

† See No. 120.

‡ See No. 285.

No. 249.—An Act to vest in the several States and Territories the title in fee of the lands which have been or may be certified to them.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in all cases where lands have been, or shall hereafter be, granted by any law of Congress to any one of the several States and Territories; and where said law does not convey the fee-simple title of such lands, or require patents to be issued therefor; the lists of such lands which have been, or may hereafter be certified by the Commissioner of the General Land-Office, under the seal of said office, either as originals, or copies of the originals or records, shall be regarded as conveying the fee simple of all the lands embraced in such lists that are of the character contemplated by such act of Congress, and intended to be granted thereby; but where lands embraced in such lists are not of the character embraced by such acts of Congress, and are not intended to be granted thereby, said lists, so far as these lands are concerned, shall be perfectly null and void, and no right, title, claim, or interest shall be conveyed thereby.

Approved, August 3, 1854.

No. 250.—An Act to revive the act approved March third, eighteen hundred and twenty-three, and the act approved May twenty-sixth, eighteen hundred and twenty-four, supplemental thereto, in reference to the Rio Hondo claims to land in Louisiana.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act approved March third, eighteen hundred and twenty-three, entitled “An act providing for the examination of the titles to land in that part of the State of Louisiana situated between the Rio Hondo and the Sabine River,” and the act approved May twenty-sixth, eighteen hundred and twenty-four, entitled “An act supplementary to an act providing for the examination of titles to land in that part of the State of Louisiana situated between the Rio Hondo and the Sabine,” be, and the same are hereby, revived for and during the space of two years from the promulgation of this act.

SEC. 2. *And be it further enacted,* That the register and receiver at Natchitoches shall, severally, receive, as a full compensation for the duties required of them by the acts herein revived, the sum of fifty dollars, whenever they shall have finished the business required of them by the acts herein revived, and shall forward their reports to the Secretary of the Treasury.

Approved, August 3, 1854.

No. 251.—An Act to graduate and reduce the price of the public lands to actual settlers and cultivators.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all of the public lands of

the United States which shall have been in market for ten years or upwards, prior to the time of application to enter the same under the provisions of this act, and still remaining unsold, shall be subject to sale at the price of one dollar per acre; and all of the lands of the United States that shall have been in market for fifteen years or upwards, as aforesaid, and still remaining unsold, shall be subject to sale at seventy-five cents per acre; and all of the lands of the United States that shall have been in market for twenty years or upwards, as aforesaid, and still remaining unsold, shall be subject to sale at fifty cents per acre; and all of the lands of the United States that shall have been in market for twenty-five years and upwards, as aforesaid, and still remaining unsold, shall be subject to sale at twenty-five cents per acre; and all lands of the United States that shall have been in market for thirty years or more, shall be subject to sale at twelve-and-a-half cents per acre; *Provided*, This section shall not be so construed as to extend to lands reserved to the United States, in acts granting land to States for railroad or other internal improvements, or to mineral lands held at over one dollar and twenty-five cents per acre.*

SEC. 2. *And be it further enacted*, That upon every reduction in price under the provisions of this act, the occupant and settler upon the lands shall have the right of pre-emption at such graduated price, upon the same terms, conditions, restrictions, and limitations, upon which the public lands of the United States are now subject to the right of pre-emption, until within thirty days preceding the next graduation or reduction that shall take place; and if not so purchased, shall again be subject to right of pre-emption for eleven months as before, and so on from time to time, as reductions take place: *Provided*, That nothing in this act shall be so construed as to interfere with any right which has or may accrue by virtue of any act granting pre-emption to actual settlers upon public lands.

SEC. 3. *And be it further enacted*, That any person applying to enter any of the aforesaid lands shall be required to make affidavit before the register or receiver of the proper land-office, that he or she enters the same for his or her own use, and for the purpose of actual settlement and cultivation, or for the use of an adjoining farm or plantation, owned or occupied by him or herself, and together with said entry, he or she has not acquired from the United States, under the provisions of this act, more than three hundred and twenty acres, according to the established surveys; and if any person or persons taking such oath or affidavit shall swear falsely in the premises, he or she shall be subject to all the pains and penalties of perjury.†

Approved, August 4, 1854.

No. 252.—An Act declaring the southern boundary of New Mexico.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, until otherwise provided by law, the territory acquired under the late treaty with Mexico, commonly known as the Gadsden treaty, be, and the same is hereby incorporated with the territory of "New Mexico," subject to all the laws of said last named territory.

Approved, August 4, 1854.

* See No. 276.

† See No. 283.

No. 253.—An Act for the relief of Thomas Bronaugh, and for the repeal of the “Act to aid the Territory of Minnesota in the construction of a railroad therein,” approved the twenty-ninth June, eighteen hundred and fifty-four.*

* * * * * *

SEC. 2. *And be it further enacted*, That the bill entitled “An act to aid the Territory of Minnesota in the construction of a railroad therein,” which passed the House of Representatives on the twentieth day of June, eighteen hundred and fifty-four, and which was approved by the President of the United States on the twenty-ninth day of June, eighteen hundred and fifty-four, be, and the same is hereby, repealed.

Approved, August 4, 1854.

No. 254.—An Act to repeal the first proviso of the fourth section of the act entitled “An act granting bounty land to certain officers and soldiers who have been engaged in the military service of the United States,” approved September twenty-eighth, one thousand eight hundred and fifty.†

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first proviso of the fourth section of the act entitled “An act granting bounty land to certain officers and soldiers who have been engaged in the military service of the United States,” approved September twenty-eighth, one thousand eight hundred and fifty, be, and the same is hereby, repealed.

Approved, August 4, 1854.‡

No. 255.—An Act to extend the right of pre-emption over unsurveyed lands in Minnesota, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of the pre-emption act of fourth September, eighteen hundred and forty-one, and the acts amendatory thereof, shall be extended to the lands in Minnesota Territory, whether surveyed or not; but in all cases where pre-emption is claimed on unsurveyed lands the settler shall file his declaratory statement within three months after the survey has been made and returned, and make proof and payment before the day appointed by the President’s proclamation for the commencement of the sale of the lands, including the tract claimed: *Provided however*, That if, when said lands are surveyed, it is found that two or more persons have settled upon the same quarter section, each shall be permitted to enter his improvement, as near as may be, by legal subdivisions.

Approved, August 4, 1854.

* See No. 242.

† See Nos. 55, 143, 184, 230, 256, 282.

‡ Same Act passed August 5th.

No. 256.—An Act making appropriations for the support of the army for the year ending the thirtieth of June, one thousand eight hundred and fifty-five.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums be, and the same are hereby, appropriated out of any money in the treasury not otherwise appropriated, for the support of the army for the year ending the thirtieth of June, one thousand eight hundred and fifty-five :

* * * * *
 SEC. [3.] *And be it further enacted,* That the act approved, September twenty-eight, one thousand eight hundred and fifty, entitled "An act granting bounty land to certain officers and soldiers who have been engaged in the military service of the United States," the act approved March twenty-second, one thousand eight hundred and fifty-two, entitled, "An act to make land warrants assignable and for other purposes," and the act approved February third, one thousand eight hundred and fifty-three, entitled, "An act to continue half pay to certain widows and orphans," shall not be so construed as to deprive any widow from the benefits therein granted for the services of her husband, though she may have married again : *Provided however,* That the applicant is a widow at the time of making the claim : *Provided,* Such party shall not receive pension during coverture.

* * * * *
Approved, August 5, 1854.

No. 257.—An Act to establish a land district in the State of Florida, to be called the District of Tampa.†

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all that part of the land districts of Neunansville and St. Augustine in the State of Florida, lying south of the line dividing townships nineteen and twenty, south, be, and the same is hereby created a land district, to be called the District of Tampa, the office for which shall be at Tampa.

SEC. 2. *And be it further enacted,* That this act shall take effect at the expiration of six months from the day of its passage.

Approved, August 5, 1854.

No. 258.—Joint Resolution directing the connection of the public surveys in Alabama with the boundary line between the States of Alabama and Florida.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the connection of the public surveys in Alabama, with the boundary line between the States of Alabama and Florida, shall be made under the direction of the General Land Office, and that the same be executed as early as practicable.

Approved, June 29, 1854.

* See Nos. 230, 254, 282.

† See No. 271.

No. 259.—An Act to relinquish to the State of Wisconsin the lands reserved for salt springs therein.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in lieu of the "twelve salt springs, with six sections of land adjoining to each," heretofore granted to the State of Wisconsin for its use by the fourth clause of the seventh section of the act entitled "An act to enable the people of Wisconsin Territory to form a Constitution and State Government, and for the admission of such State into the Union," approved the sixth day of August, in the year eighteen hundred and forty-six, there be and hereby is granted to the said State of Wisconsin, to be selected by the legislature of said State out of any public land subject to private entry, and to be sold in such manner as the legislature may direct, for the benefit and in aid of the university of said State, and for no other purpose whatever, seventy-two sections of land: Provided, That any selections of land heretofore made under the act entitled "An act to extend the time for selecting land granted to the State of Wisconsin, for saline purposes," approved the fourth day of May, eighteen hundred and fifty-two, and which shall not have been sold by the United States, and is not legally claimed by pre-emption, or otherwise, shall be, and hereby are granted and confirmed to said State for the use of the university of said State, as a part of the seventy-two sections hereby granted.*

Approved, December 15, 1854.

No. 260.—An Act allowing the further time of two years to those holding lands by entries in the Virginia military district in Ohio, which were made prior to first January, eighteen hundred and fifty-two, to have the same surveyed and patented.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the officers and soldiers of the Virginia line, or continental establishment, their heirs or assigns, entitled to bounty lands, which have, prior to the first day of January, Anno Domini, eighteen hundred and fifty-two, been entered within the tract reserved by Virginia, between the Little Miami and Sciota rivers, for satisfying the legal bounties to her officers and soldiers, upon continental establishment, shall be allowed the time of two years, from and after the passage of this act, to make and return their surveys and warrants, or certified copies of warrants, to the General Land Office.†

Approved, December 19, 1854.

No. 261.—An Act to provide for the extinguishment of the title of the Chippewa Indians to the lands owned and claimed by them in the Territory of Minnesota, and State of Wisconsin, and for their domestication and civilization.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President be, and he

* See Nos. 113, 191.

† Repealed. See No. 281.

is hereby, authorized to cause negotiations to be entered into with the Chippewa Indians, for the extinguishment of their title to all the lands owned and claimed by them in the Territory of Minnesota, and State of Wisconsin, which treaties shall contain the following provisions, and such others as may be requisite and proper to carry the same into effect :—

First. Granting to each head of a family, in fee simple, a reservation of eighty acres of land, to be selected in the territory ceded, so soon as surveys shall be completed, by those entitled, which said reservations shall be patented by the President of the United States, and the patent therefor shall expressly declare that the said lands shall not be alienated or leased by the reservees, or their heirs and legal representatives, until otherwise ordered by Congress, and no change of location shall be made without the assent of the President of the United States.

Second. The annuities to which said Indians are entitled, under existing treaties, with the consent of said Indians, together with such as may be allowed them for the cession, or cessions, under the provisions of this act, shall be equally distributed and paid them at their villages, or settlements, within the limits of the ceded territory ; but the President shall be invested with power to cause said annuities to be commuted, from time to time, for such articles of goods, provisions, stock, cattle, implements of agriculture, the clearing and fencing of land, and the erection of buildings and other improvements, as, in his discretion, will conduce most to promote their comfort, civilization, and permanent welfare.

Third. All the benefits and privileges granted to said Indians shall be extended to and enjoyed by the mixed bloods belonging to or connected with the tribe, and who shall permanently reside on the ceded lands.

Fourth. The laws of the United States and the Territory of Minnesota shall be extended over the Chippewa territory in Minnesota whenever the same may be ceded, and the same shall cease to be "Indian country," except that the lands reserved to said Indians, or other property owned by them, shall be exempt from taxation and execution ; and that the act passed thirtieth June, eighteen hundred and thirty-four, "to regulate trade and intercourse with the Indian tribes," etc., be inoperative over the said ceded territory, except the twentieth section, which prohibits the introduction and sale of spirituous liquors to Indians.

Fifth. The President shall have power to prescribe and enforce such rules and regulations, not inconsistent with the foregoing provisions, as he may deem necessary for the effectual execution of the purposes of this act, which said rules and regulations shall be annually reported to congress.

SEC. 2. *And be it further enacted*, That, for the purpose of defraying the expenses of said negotiations, the sum of ten thousand dollars be, and the same is hereby, appropriated out of any money in the treasury not otherwise appropriated.

Approved, December, 19, 1854.

No. 262.—An Act to authorize the issue of patents to lands in any State or Territory, in certain cases.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in case of any claim to land in any State or Territory which has heretofore been confirmed by law, and

in which no provision is made by the confirmatory statute for the issue of patents, it shall and may be lawful, where surveys for the land have been or may hereafter be made, to issue patents for the claims so confirmed, upon the presentation to the Commissioner of the General Land Office of plats of survey thereof, duly approved by the surveyor-general of any State or Territory, if the same be found correct by the said commissioner: *Provided*, That such patents shall only operate as a relinquishment of title on the part of the United States, and shall in no manner interfere with any valid adverse right, if such exist, to the same land, nor be construed to preclude a legal investigation and decision by the proper judicial tribunal between adverse claimants to the same land.

Approved, December 22, 1854.

No. 263.—An Act vesting the title of the United States to certain land in the city of Cincinnati.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the title and interest of the United States to the unsold land (if any there be) in fractional section number eleven, in fractional township number four, in fractional range number one, of John Cleve Symme's purchase of lands, within the now State of Ohio, be, and the same hereby is, vested in the corporate authorities of the city of Cincinnati, and their successors in office, and in any other occupants of the same, in severalty, upon payment to the Commissioner of the General Land-Office of the minimum price of land subject to entry: *Provided*, That nothing in this act shall be so construed as to impair the legal or equitable rights of any other person or persons to the said land, or to any part thereof.

Approved, December 29, 1854.

No. 264.—An Act to continue in force, for a limited time, the provisions of the act of Congress of third March, eighteen hundred and fifty-one, and the second section of its supplement of eighteenth January, eighteen hundred and fifty-four, so as to enable the board of land commissioners in California to close their adjudications of private land titles in that State, and for other purposes.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of the act of Congress approved Third March, eighteen hundred and fifty-one, "to ascertain and settle the private land claims in the State of California," and of the second section of the act of eighteenth January, eighteen hundred and fifty-four, continuing the same in force, be further continued in force for the term of one year, and no longer, from the third March, eighteen hundred and fifty-five.

SEC. 2. *And be it further enacted*, That the United States district attorney for the northern district of California be, and he is hereby, authorized to employ assistant counsel to aid him in defending the interests of the

* See Nos. 189, 229.

United States in the land suits for the adjudication of such claims before the district court, at a salary not exceeding three thousand six hundred dollars per annum, and also to employ such clerical force, not exceeding two persons, at a compensation of one hundred and fifty dollars per month each; the services of said assistant counsel, and the clerical force aforesaid, not to continue beyond the exigencies of the service, nor longer than the term of one year from the period of their several appointments.

SEC. 3. *And be it further enacted*, That the said commissioners, or either of them, may issue the writ of subpoena requiring the attendance of witnesses before the said board, and that for any contempt in refusing obedience to such writ, the said board shall have the same power to inflict punishment now possessed by the district court of the United States.

Approved, January 10, 1855.

No. 265.—An Act to continue, temporarily, the offices of register and receiver at Vincennes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the offices of register and receiver shall be continued at Vincennes, Indiana, until after a final report shall have been made by the commissioners pursuant to the act of Congress, approved July twenty-seventh, eighteen hundred and fifty-four,* entitled, "An act to ascertain and adjust the titles to certain lands in the State of Indiana," and the act of Congress approved twelfth June, eighteen hundred and forty, for the discontinuance of land-offices, under certain circumstances, shall not apply to the offices at Vincennes, until the services required by the aforesaid act of twenty-seventh July, eighteen hundred and fifty-four, of the commissioners, shall have been fully performed.

Approved, February 13, 1855.

No. 266.—An Act to establish an additional land district in the Territory of Oregon.†

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all the land lying south of the fourth standard parallel, in the Territory of Oregon, be, and the same is hereby, created a new land district, to be called the Umpqua district; the land office for which shall be established at such place within said district as the President shall from time to time direct, and the officers, for which shall be appointed, in the same manner, and have the compensation, powers, duties, obligations and responsibilities, that are prescribed in the sixth section of the act approved July seventeen, eighteen hundred and fifty-four, entitled "An act to amend the act approved September twenty-seven, eighteen hundred and fifty, to create the office of surveyor-general of the public lands in Oregon," etc. : *Provided however*, That this act shall not go into effect until three months after its passage.

* See Nos. 42, 214, 246.

† See Nos. 181, 218, 244.

SEC. 2. *And be it further enacted*, That the district lying north of the fourth standard parallel in said territory shall be known as the Willamette land district.

Approved, February 17, 1855.

No. 267.—An Act to establish the office of surveyor-general of Utah, and to grant land for school and university purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President, by and with the advice and consent of the Senate, shall be, and he is hereby, authorized to appoint a surveyor-general for Utah, whose annual salary shall be three thousand dollars, and whose power, authority, and duties, shall be the same as those provided by law for the surveyor-general of Oregon, prior to the act of July seventeen, eighteen hundred and fifty-four:* and he shall locate his office from time to time at such places as may be directed by the President of the United States.

SEC. 2. *And be it further enacted*, That when the lands in said territory shall be surveyed under the direction of the government of the United States, preparatory to bringing the same into market, sections numbered sixteen and thirty-six in each township in said territory shall be, and the same are hereby, reserved for the purpose of being applied to schools in said territory, and in the States and territories hereafter to be created out of the same.

SEC. 3. *And be it further enacted*, That when the lands in said territory shall be surveyed as aforesaid, a quantity of land equal to two townships shall be, and the same is hereby, reserved for the establishment of a university in said territory, and in the State hereafter to be created out of the same, to be selected under the direction of the legislature, in legal subdivisions of not less than one-half section, and to be disposed of as said legislature may direct.

SEC. 4. *And be it further enacted*, That full power and authority are hereby given to the Secretary of the Interior to issue all needful rules and regulations for fully carrying into effect the several provisions of this act.

Approved, February 21, 1855.

No. 268.—An Act to establish an additional land district in the State of Wisconsin.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all that part of the present Willow River land district, in the State of Wisconsin, lying north of the line dividing townships forty and forty-one, (or fourth correction line,) be, and the same is hereby, created a land district, to be called the Fond du Lac District; the office for which shall be located at such place therein as the President may, from time to time, direct.

SEC. 2. *And be it further enacted*, That there shall be appointed by the

* See No. 244.

President, by and with the advice and consent of the Senate, a register and a receiver for said district, who shall respectively be required to reside at the site of the office, be subject to the same laws, and entitled to the same compensation, as is, or may hereafter be, prescribed by law in relation to other land offices of the United States.

SEC. 3. *And be it further enacted*, That the sales shall continue at the Willow River district till the land officers for that district are notified that the officers for the district created by this act are prepared to enter on their duties: and in all cases hereafter the salaries of land officers shall commence only from the time they enter on the discharge of their duties.

Approved, February 24, 1855.

No. 269.—An Act extending, in certain cases, the provisions of the act entitled “An act to extend pre-emption rights to certain land therein mentioned,” approved March third, eighteen hundred and fifty-three.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the right of pre-emption granted by the act of third March, eighteen hundred and fifty-three,* entitled “An act to extend pre-emption rights to certain lands therein mentioned,” shall be, and the same is hereby extended so that the settler, or occupant on the Maison Rouge grant and the De Bastrop grant, entitled to the benefits of said act, shall be entitled to enter, at the minimum price, every quarter-quarter subdivision, on which he has made improvements: *Provided however*, That where any part of the improvements of two or more settlers or occupants is on the same quarter-quarter section, the same shall be entered in their joint names, and their rights shall be proportionate to the extent and value of their improvements thereon.

Approved, March 2, 1855.

No. 270.—An Act to amend the act approved twenty-sixth August, eighteen hundred and fifty-two, entitled “An act to reduce and define the boundaries of the military reserve at Saint Peter's River, in the Territory of Minnesota,” and for other purposes.†

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act approved twenty-sixth August, eighteen hundred and fifty-two, “to reduce and define the boundaries of the military reserve at Saint Peter's River, in the Territory of Minnesota,” shall be, and the same is hereby, amended, so that the lands authorized to be sold at public sale by that act shall be subject to the operations of the laws regulating the sale and disposition of the public lands: *Provided however*, That where any of said lands are claimed by pre-emption, under settlement and cultivation made prior to the passage of this act, proof and payment shall be made within three months after its passage; and where any of said lands come within the provisions of the act of twenty-third May, eighteen hundred and forty-four,‡ for the relief of the citizens

* See No. 222.

† See No. 209.

‡ See No. 79.

of towns upon the lands of the United States, under certain circumstances, such proof and payments shall also be made within three months after the passage of this act; and in either case, if the entries are not made within that time, the claim shall be forfeited: *Provided further*, That where two or more persons are settled upon the same legal subdivision, they shall be permitted to enter it jointly,—the right of each to be in proportion to the extent of his improvements.

SEC. 2. *And be it further enacted*, That the Reverend E. G. Gear shall be, and he is hereby, authorized to enter lots numbers one and two and the west half of the northeast quarter of section four, in township twenty-eight north, of range twenty-four west, of the fourth principal meridian, in the Minneapolis district, at one dollar and twenty-five cents per acre.

Approved, March 2, 1855.

NO. 271.—An Act to amend “An act to establish a land district in the State of Florida, to be called the district of Tampa.”

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President be, and he is hereby, authorized to appoint, by and with the advice and consent of the Senate, a register and a receiver for the land district called Tampa, in the State of Florida, which district was created by the act approved August fifth, eighteen hundred and fifty-four,* whose compensation, duties, responsibilities, and emoluments shall be the same as is or may be prescribed by law for other land officers in said State.

Approved, March 2, 1855.

NO. 272.—An Act to settle certain accounts between the United States and the State of Alabama.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Commissioner of the General Land Office be, and he is hereby, required to state an account between the United States and the State of Alabama, for the purpose of ascertaining what sum or sums of money are due to said State, heretofore unsettled, under the sixth section of the act of March second, eighteen hundred and nineteen,† for the admission of Alabama into the Union; and that he be required to include in said account the several reservations under the various treaties with the Chickasaw, Choctaw, and Creek Indians within the limits of Alabama, and allow and pay to the said State five per centum thereon, as in case of other sales.

Approved, March 2, 1855.

* See No. 257.

† See No. 314.

No. 273.—An Act to establish a Circuit Court of the United States in and for the State of California.*

* * * * *

SEC. 5. *And be it further enacted*, That the district courts of the United States for the northern and southern districts of California, shall hereafter exercise only the ordinary duties and powers of the district courts of the United States, except the special jurisdiction vested in the said district courts of California over the decisions of the board of commissioners for the settlement of private land claims in California under existing laws; and that appeals from the judgments, orders, and decrees of either of said district courts of California, in the exercise of its ordinary jurisdiction, shall be taken to the circuit court organized by this act in the same manner and upon the same conditions as appeals may be taken from the judgments, orders, or decrees of the district courts to the circuit courts of the United States.

SEC. 6. *And be it further enacted*, That the judge appointed under this act shall, from time to time, or at any time when in his opinion the business of his own court will permit, and that of the courts of the northern and southern districts of California shall require, form part of, and preside over, the said district courts when either of them is engaged in the discharge of the appellate jurisdiction vested in it over the decisions of the board of commissioners for the settlement of private land claims in the State of California, under the act of Congress entitled "An act to ascertain and settle the private land claims in the State of California," passed March third, eighteen hundred and fifty-one, and by another act entitled "An act making appropriations for the civil and diplomatic expenses of the government for the year ending thirtieth of June, eighteen hundred and fifty-three, and for other purposes," passed thirty-first of August, eighteen hundred and fifty-two; and it shall be the duty of the clerks of the respective district courts of California, to give thirty days' written notice to the judge of the court organized under this act, of the time and place of the sitting of such district court for the discharge of such appellate jurisdiction; and in case the judge of such district court shall fail, from sickness or other casualty, to attend at such time and place, the judge of the court organized under this act, is hereby authorized to hold said court, and proceed with the business of the court, in accordance with the provisions prescribed for the regulation of said district court in the act of Congress hereinbefore referred to; and all appeals to the Supreme Court of the United States from the decisions of said district court, whether held by the last-mentioned judge, or by him in conjunction with the district judge, or by the district judge alone, shall be taken in the manner prescribed by the act of Congress passed on the third day of March, eighteen hundred and fifty-one, entitled "An act to ascertain and settle the private land claims in the State of California."

SEC. 7. *And it further enacted*, That the salary of the judge appointed under this act shall be four thousand five hundred dollars per annum, to commence from the date of his appointment.

SEC. 8. *And be it further enacted*, That all laws and parts of laws militating against this act be, and the same are hereby, repealed.

Approved, March 2, 1855.

* See No. 189.

No. 274.—An Act to confirm the canal selections in the State of Ohio.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the selections of land by the State of Ohio, for canal purposes, under the act of second March, eighteen hundred and twenty-seven, and twenty-fourth May, eighteen hundred and twenty-eight, be, and the same are hereby, confirmed.

Approved, March 2, 1855.

No. 275.—An Act for the relief of purchasers and locators of swamp and overflowed lands.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States cause patents to be issued, as soon as practicable, to the purchaser or purchasers, locator or locators, who have made entries of the public lands claimed as swamp lands, either with cash, or with land warrants, or with scrip, prior to the issue of patents to the State or States, as provided for by the second section of the act approved September twenty-eight, eighteen hundred and fifty, entitled "An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits," any decision of the Secretary of the Interior, or other officer of the government of the United States, to the contrary notwithstanding: *Provided,* That in all cases where any State, through its constituted authorities, may have sold or disposed of any tract or tracts of said land to any individual or individuals prior to the entry, sale, or location of the same, under the pre-emption or other laws of the United States, no patent shall be issued by the President for such tract or tracts of land, until such State, through its constituted authorities, shall release its claim thereto, in such form as shall be prescribed by the Secretary of the Interior: *And provided further,* That if such State shall not, within ninety days from the passage of this act, through its constituted authorities, return to the General Land-Office of the United States, a list of all the lands sold as aforesaid, together with the dates of such sale, and the names of the purchasers, the patents shall be issued immediately thereafter, as directed in the foregoing section.

SEC. 2. *And be it further enacted,* That upon due proof, by the authorized agent of the State or States, before the commissioner of the General Land Office, that any of the lands purchased were swamp lands, within the true intent and meaning of the act aforesaid, the purchase-money shall be paid over to the said State or States; and where the lands have been located by warrant or scrip, the said State or States shall be authorized to locate a quantity of like amount, upon any of the public lands subject to entry, at one dollar and a quarter per acre, or less, and patents shall issue therefor, upon the terms and conditions enumerated in the act aforesaid: *Provided however,* That the said decisions of the Commissioner of the General Land Office shall be approved by the Secretary of the Interior.

Approved, March 2, 1855.

* See act for relief of purchasers. No. 182.

No. 276.—An Act to increase the compensation of the registers of land offices and receivers of public moneys under the act entitled an act to graduate and reduce the price of the public lands to actual settlers and cultivators, approved August fourth, eighteen hundred and fifty-four.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That each register of a land office and receiver of public moneys shall receive the same amount of pay for each and every entry of land made under the act entitled “An act to graduate and reduce the price of the public lands to actual settlers and cultivators, approved August fourth, eighteen hundred and fifty-four,” as such officer is by law entitled to receive for similar entries of land at the minimum price of one dollar and twenty-five cents per acre: *Provided*, That the whole amount received per year shall in no case exceed the limitation fixed by existing laws.

Approved, March 3, 1855.

No. 277.—An Act making appropriations for the civil and diplomatic expenses of government, for the year ending the thirtieth of June, eighteen hundred and fifty-six, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums be, and the same are hereby, appropriated, out of any money in the treasury not otherwise appropriated, for the objects hereafter expressed, for the fiscal year ending the thirtieth of June, one thousand eight hundred and fifty-six, namely:—

*	*	*	*	*	*	*	*
For amount required to enable the Secretary of the Interior to execute the provisions of the “act to graduate and reduce the price of the public lands to actual settlers and cultivators,” approved fourth August, one thousand eight hundred and fifty-four,† thirty thousand dollars: <i>Provided however</i> , That in all cases where lands have been or shall hereafter be sold under the act of fourth August, eighteen hundred and fifty-four, “to graduate and reduce the price of the public lands to actual settlers and cultivators,” at a higher rate than authorized by that act, the Secretary of the Interior shall be, and is hereby authorized, to direct the receivers of public money for the proper land district, to refund the excess out of any money in his hands derived from the sales of public lands; and the periods and principle of graduation, fixed by the instructions of the General Land Office, of thirtieth October, eighteen hundred and fifty-four, shall be, and they are hereby confirmed.							
*	*	*	*	*	*	*	*

Approved, March 3, 1855.

* See No. 251.

† See No. 251.

No. 278.—An Act extending the provisions of the act of August fourth, eighteen hundred and fifty-two, entitled "An act to grant the right of way to all rail and plank roads and macadamized turnpikes passing through the public lands belonging to the United States," to the public lands in the Territories of the United States.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of the act entitled "An act to grant the right of way to all rail and plank roads and macadamized turnpikes passing through the public lands belonging to the United States," approved August fourth, eighteen hundred and fifty-two, be, and the same is hereby, extended to all of the public lands of the United States in the Territories of the United States.

Approved, March 3, 1855.

No. 279.—An Act making appropriations for the service of the Post-Office Department during the fiscal year, ending the thirtieth of June, one thousand eight hundred and fifty six.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums be, and the same are hereby, appropriated for the service of the Post Office Department, for the year ending the thirtieth of June, one thousand eight hundred and fifty-six, out of any moneys in the treasury arising from the revenues of the said department, in conformity to the act of the second of July, one thousand eight hundred and thirty-six :—

* * * * * * *

For compensation to George H. Giddings, for carrying the mail on route number twelve thousand nine hundred, from Santa Fe, New Mexico, to San Antonia, Texas, monthly, each way, according to the contract under which said service is now being performed, the sum of thirty-three thousand five hundred dollars per annum, commencing with the eighteenth day of August, eighteen hundred and fifty-four, and continuing one year, and in lieu of the compensation therein stipulated: *Provided,* That the Postmaster-General with the assent of the contractors, be, and he is hereby, authorized to annul said contract. And that each contractor engaged, or to be engaged in carrying mails through any of the Territories west of the Mississippi, shall have the privilege of occupying stations at the rate of not more than one for every twenty miles of the route on which he carries a mail, and shall have a pre-emptive right therein, when the same shall be brought into market, to the extent of six hundred and forty acres to be taken contiguously, and to include his improvement; but no such pre-emptive right shall extend to any pass in a mountain or other defile.

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Approved, March 3, 1855.

* See No. 206.

No. 280.—An Act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June thirtieth, one thousand eight hundred and fifty-six, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums be, and they are hereby, appropriated, out of any money in the treasury not otherwise appropriated, for the purpose of paying the current and contingent expenses of the Indian Department, and fulfilling treaty stipulations with the various Indian tribes.

* * * * *

For collecting, removing, and subsisting the Indians of California, (as provided by law,) on two additional military reservations, to be selected as heretofore, and not to contain exceeding twenty-five thousand acres each, in or near the State of California, the sum of one hundred and fifty thousand dollars: *Provided*, That the President may enlarge the quantity of reservations heretofore selected, equal to those hereby provided for, and shall not expend the amount herein appropriated unless, in his opinion, the same shall be expedient; and the last proviso to the authority for five military reservations in California, per act of third of March, eighteen hundred and fifty-three, be, and the same is hereby, repealed: *Provided*, That so much of the act approved on the thirty-first of July last, as requires that no more than twenty thousand dollars shall be drawn by the Superintendent of Indian Affairs, or be in his hands unexpended at one and the same time, be, and the same is hereby, repealed.*

* * * * *

SEC. 2. *And be it further enacted*, That section four† of the “Act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June thirtieth, one thousand eight hundred and fifty-five, and for other purposes,” approved thirty-first July, eighteen hundred and fifty-four, shall not be so construed as to interfere with an act entitled, “An act to authorize the President of the United States to cause to be surveyed, the tract of land in the Territory of Minnesota, belonging to the half-breeds or mixed bloods of the Dacotah or Sioux nation of Indians, and for other purposes,” approved July seventeen, eighteen hundred and fifty-four: *Provided*, That so much of the money appropriated by the first-named act, as may be necessary to carry out the last-named act, shall be applicable thereto.†

* * * * *

SEC. 5. *And be it further enacted*, That to enable the President of the United States to carry out, in good faith, the recent treaties with the Ottos and Missourias, Omahas, Delawares, Ioways, Sacs and Foxes of Missouri,

* See No. 221.

† Said section reads as follows:—**SEC. 5.** [4.] *And be it further enacted*, That the President be, and he is hereby, authorized and required to cause to be fulfilled the stipulations of the ninth and tenth articles of the treaty with the Sacs and Foxes, and other tribes of Indians, concluded on the fifteenth of July, one thousand eight hundred and thirty, by causing said reserved tracts to be surveyed and allotted to the persons properly entitled to the same, in fee simple, in such manner and under such rules and regulations as he may prescribe; and to defray the expenses of the same, there be, and is hereby, appropriated the sum of ten thousand nine hundred and twenty-two dollars and twenty-nine cents.

‡ See No. 243.

Kickapoos, and the united tribes of Kaskaskias and Peorias, Piankeshaws and Weas, Shawnees and Miamies, there shall be, and hereby is, appropriated, the sum of twenty thousand dollars, in addition to the appropriations heretofore made, for the execution of the surveys required by said treaties; and where the net proceeds of the lands ceded by either of said treaties are required to be paid over to the Indians, the President shall cause said lands, or such parts thereof as he may deem proper, to be classified and valued, and when such classification and valuation have been made to his satisfaction, he shall cause said lands to be offered at public sale, by legal subdivisions or town lots, at such times and places, and in such manner and quantity, as to him shall appear proper and necessary to carry out faithfully the stipulations in said treaties; and said lands shall not be sold at public or private sale for a less price than that fixed by the valuation aforesaid, nor shall any land be sold at a less price than one dollar and twenty-five cents per acre, for three years, and thereafter as may be directed by law pursuant to the treaty.

* * * * *

Approved, March 3, 1855.

No. 281.—An Act allowing the further time of two years to those holding lands by entries in the Virginia military district in Ohio, which were made prior to the first [of] January, eighteen hundred and fifty-two, to have the same surveyed and patented.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the officers and soldiers of the Virginia line on continental establishment, their heirs or assigns, entitled to bounty lands, which have, prior to the first day of January, Anno Domini eighteen hundred and fifty-two, been entered within the tract reserved by Virginia, between the Little Miami and Sciota Rivers, for satisfying the legal bounties to her officers and soldiers upon continental establishment, shall be allowed the further time of two years from and after the passage of this act to make and return their surveys and warrants, or certified copies of warrants, to the General Land Office.

SEC. 2. *And be it further enacted,* That the act entitled "An act allowing the further time of two years to those holding lands by entries in the Virginia military district in Ohio, which were made prior to first January, eighteen hundred and fifty-two, to have the same surveyed and patented," approved December nineteenth, eighteen hundred and fifty-four, be, and the same is hereby, repealed.*

Approved, March 3, 1855.

No. 282.—An Act in addition to certain acts granting bounty land to certain officers and soldiers who have been engaged in the military service of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That each of the surviving com-

* See No. 260.

missioned and non-commissioned officers, musicians, and privates, whether of regulars, volunteers, rangers, or militia, who were regularly mustered into the service of the United States, and every officer, commissioned and non-commissioned, seaman, ordinary seaman, flotilla-man, marine, clerk, and landsman in the navy, in any of the wars in which this country has been engaged since seventeen hundred and ninety, and each of the survivors of the militia, or volunteers, or State troops of any State or Territory, called into military service, and regularly mustered therein, and whose services have been paid by the United States, shall be entitled to receive a certificate or warrant from the Department of the Interior for one hundred and sixty acres of land;* and where any of those who have so been mustered into service and paid shall have received a certificate or warrant, he shall be entitled to a certificate or warrant for such quantity of land as will make, in the whole, with what he may have heretofore received, one hundred and sixty acres to each such person having served as aforesaid: *Provided*, The person so having been in service shall not receive said land warrant if it shall appear by the muster-rolls of his regiment or corps that he deserted, or was dishonorably discharged from service: *Provided further*, That the benefits of this section shall be held to extend to wagon-masters and teamsters who may have been employed under direction of competent authority in time of war in the transportation of military stores and supplies.

SEC. 2. *And be it further enacted*, That in case of the death of any person who, if living, would be entitled to a certificate or warrant as aforesaid under this act, leaving a widow, or, if no widow, a minor child or children, such widow, or, if no widow, such minor child or children, shall be entitled to receive a certificate or warrant for the same quantity of land that such deceased person would be entitled to receive under the provisions of this act, if now living: *Provided*, That a subsequent marriage shall not impair the right of any such widow to such warrant if she be a widow at the time of making her application; *And provided further*, That those shall be considered minors who are so at the time this act shall take effect.

SEC. 3. *And be it further enacted*, That in no case shall any such certificate or warrant be issued for any service less than fourteen days, except where the person shall actually have been engaged in battle, and unless the party claiming such certificate or warrant shall establish his or her right thereto by record evidence of said service.

SEC. 4. *And be it further enacted*, That said certificates or warrants may be assigned, transferred, and located by the warrantees, their assignees, or their heirs-at-law, according to the provisions of existing laws regulating the assignment, transfer, and location of bounty-land warrants.

SEC. 5. *And be it further enacted*, That no warrant issued under the provisions of this act shall be located on any public lands, except such as shall at the time be subject to sale at either the minimum or lower graduated prices.

SEC. 6. *And be it further enacted*, That the registers and receivers of the several land-offices shall be severally authorized to charge, and receive for their services, in locating all warrants under the provisions of this act, the same compensation or per centage to which they are entitled by law, for sales of the public lands, for cash, at the rate of one dollar and twenty-five cents per acre; the said compensation to be paid by the assignees or holders of such warrants.

* See Nos. 126, 138, 183, 190, 213, 230, 254, 256, 287, 335.

SEC. 7. *And be it further enacted*, That the provisions of this act, and all the bounty land laws heretofore passed by Congress, shall be extended to Indians, in the same manner, and to the same extent, as if the said Indians had been white men.

SEC. 8. *And be it further enacted*, That the officers and soldiers of the revolutionary war, or their widows or minor children, shall be entitled to the benefits of this act.

SEC. 9. *And be it further enacted*, That the benefits of this act shall be applied to and embrace those who served as volunteers at the invasion of Plattsburg, in September, eighteen hundred and fourteen; also at the battle of King's Mountain, in the revolutionary war, and the battle of Nickojock, against the confederated savages of the South.

SEC. 10. *And be it further enacted*, That the provisions of this act shall apply to the chaplains who served with the army, in the several wars of the country.

SEC. 11. *And be it further enacted*, That the provisions of this act be applied to those who served as volunteers at the attack on Lewistown, in Delaware, by the British fleet, in the war of eighteen hundred and twelve—fifteen.

Approved, March 3, 1855.

No. 283.—An Act to amend an act approved the fourth of August, eighteen hundred and fifty-four, entitled “An act to graduate and reduce the price of the public lands to actual settlers and cultivators.”

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act approved fourth August, eighteen hundred and fifty-four, “To graduate and reduce the price of the public lands to actual settlers and cultivators,” shall be so construed that the affidavits required by the third section of that act may be made before any officer duly authorized by law to administer oaths, according to such forms, and pursuant to such regulations, as shall be prescribed by the Secretary of the Interior.*

Approved, March 3, 1855.

No. 284.—An Act to change the boundaries of the land districts in the State of Iowa, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all that portion of the public lands in the State of Iowa lying north of township line dividing townships ninety-three and ninety-four, and east of the range line dividing ranges twenty-four and twenty-five, shall constitute a new land district, to be called the Turkey River district. That all that portion of the public lands in said State, now situated in the northern land district which lies north of the township line dividing townships eighty-five and eighty-six, and not included in the Turkey River and Dubuque districts, shall con-

* See No. 251.

stitute a new land district, to be called the Fort Dodge district, and the name of the northern district is hereby changed to, and shall be hereafter called the Fort Des Moines district. That all that portion of the public lands in said State, now lying in the Kaneshville district, and situated north of the township line dividing townships eighty-five and eighty-six, shall constitute a new land district, to be called the Sioux River district, and the name of the Kaneshville district is hereby changed to, and shall be hereafter called, the Council Bluffs district. That townships eighty-six, eighty-seven, eighty-eight, eighty-nine, ninety, ninety-one, ninety-two, and ninety-three, of ranges seventeen and eighteen, are hereby attached to and made a part of the Dubuque land district, and townships sixty-seven, sixty-eight, sixty-nine, seventy, seventy-one, seventy-two, seventy-three, seventy-four and seventy-five, of ranges thirty-two and thirty-three, are hereby attached to and made a part of the Chariton land district.

SEC. 2. *And be it further enacted*, That the President of the United States be and he is hereby authorized to appoint, by and with the advice and consent of the Senate, a register and a receiver of the public moneys for each of the districts respectively hereby created, who shall each be required to reside at the site of the respective office to which he may be appointed, and who shall have the same powers, perform the same duties, and be entitled to the same compensation, as are or may be prescribed by law in relation to other land officers of the United States.

SEC. 3. *And be it further enacted*, That the President of the United States is authorized to cause the public lands in said districts respectively, (with the exception of sections numbered sixteen in each township, reserved for the use of schools, or such lands as may be selected by law in lieu thereof, and such other tracts as may be selected for military or other purposes,) to be exposed to sale in the same manner and upon the same terms and conditions as the other public lands of the United States.

SEC. 4. *And be it further enacted*, That the President of the United States is hereby authorized to designate the sites at which each of the several offices shall be established, and to remove the same to any other places within said districts respectively, whenever in his opinion it may be deemed expedient.

SEC. 5. *And be it further enacted*, That any locations or sales of land, in either of the districts of land now subject to sale at Dubuque, Fort Des Moines, or Kaneshville, after the passage of this act, and before the receipt, by the land-officers respectively, thereat, of instructions from [the] Commissioner of the General Land Office, under this act, shall be as good and valid in law as if this act had not been passed.

Approved, March 3, 1855.

No. 285.—A Resolution explanatory of an act passed August third, eighteen hundred and fifty-four.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That it was the intention of the act of Congress, approved August third, eighteen hundred and fifty-four, and the same shall be construed, to give to Wisconsin in aid of the improvement of the navigation of the Fox and Wisconsin Rivers, a quantity of land, equal mile for mile of its improvement to that granted to Indiana,

under the provisions of the Act of Congress approved May the ninth, eighteen hundred and forty-eight.*

Approved, March 3, 1855.

No. 286.—An Act to continue temporarily the land-offices at Kalamazoo, in the State of Michigan, and at Palmyra, in the State of Missouri.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the offices of register and receiver of the Land Office at Kalamazoo, in the State of Michigan, and the office itself, shall be continued until such time as, in the opinion of the President, the same can be discontinued without prejudice to the public interests. And that until that time, the act of Congress approved June twelfth, eighteen hundred forty, shall not apply to the said office or officers.†

SEC. 2. *And be it further enacted,* That the compensation of the said register and receiver shall be allowed them agreeably to law, during the time of discontinuance under the existing order.

SEC. 3. *And be it further enacted,* That the provisions of sections one and two of this act are hereby made applicable to the Land-Office at Palmyra, in the State of Missouri, and the register and receiver thereof.

Approved, April 5, 1856.

No. 287.—An Act to amend the act in addition to certain acts granting bounty lands to certain officers and soldiers who have been engaged in the military service of the United States, approved March third, eighteen hundred and fifty-five.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in all cases where a certificate or warrant for bounty land for any less quantity than one hundred and sixty acres, shall have been issued to any officer or soldier, or to the widow or minor child or children of any officer or soldier, under existing laws, the evidence upon which such certificate or warrant was issued shall be received to establish the service of such officer or soldier in the application of himself, or of his widow or minor child or children, for a certificate or warrant for so much land as may be required to make up the full sum of one hundred and sixty acres, on proof of the identity of such officer or soldier, or in case of his death, of the marriage and identity of his widow, or in case of her death, of the identity of his minor child or children: *Provided nevertheless,* That if, upon a review of such evidence, the Commissioner of Pensions shall not be satisfied that the former certificate or warrant was properly granted, he may require additional evidence, as well of the term as of the fact of service.‡

SEC. 2. *And be it further enacted,* That in all cases where a pension has been granted to any officer or soldier, the evidence upon which such

* See Nos. 120, 165, 248.

† See No. 42.

‡ See No. 260.

pension was granted shall be received to establish the service of such officer or soldier in his application for bounty land under existing laws; and upon proof of his identity as such pensioner, a certificate or warrant may be issued to him for the quantity of land to which he shall be entitled; and in case of the death of such pensioned officer or soldier, his widow shall be entitled to a certificate or warrant for the same quantity of land to which her husband would have been entitled, if living, upon proof that she is such widow, and in case of the death of such officer or soldier, leaving a minor child or children and no widow, or where the widow may have deceased before the issuing of any certificate or warrant, such minor child or children shall be entitled to a certificate or warrant for the same quantity of land as the father would have been entitled to receive if living, upon proof of the decease of father and mother: *Provided nevertheless*, That if, upon a review of such evidence, the Commissioner of Pensions shall not be satisfied that the pension was properly granted, he may require additional evidence, as well of the term as of the fact of service.

SEC. 3. *And be it further enacted*, That so much of the third section of the "Act in addition to certain acts granting bounty land to certain officers and soldiers who have been engaged in the military service of the United States," approved March third, eighteen hundred and fifty-five, as requires the party claiming a certificate or warrant, under the provisions of said act, to establish his or her right thereto, by record evidence of the service for which such certificate or warrant has been or may be claimed, be, and the same is hereby, repealed, and parol evidence, where no record evidence exists, may be admitted to prove the service performed, under such rules and regulations as the Commissioner of Pensions may prescribe.

SEC. 4. *And be it further enacted*, That the eighth section of the act above mentioned, approved the third day of March, in the year eighteen hundred and fifty-five, shall be construed as embracing officers, marines, seamen, and other persons engaged in the naval service of the United States during the revolutionary war, and the widows and minor children of all such officers, marines, seamen, and other persons engaged as aforesaid.

SEC. 5. *And be it further enacted*, That the provisions of the said act shall extend to all persons who have served as volunteers with the armed forces of the United States, subject to military orders, for the space of fourteen days, in any of the wars specified in the first section of the said act, whether such persons were or were not mustered into the service of the United States.

SEC. 6. *And be it further enacted*, That the widows and minor children of all such persons as are specified in the last preceding section of this act, and are now dead, shall be entitled to the same privileges as the widows and minor children of the beneficiaries named in the act to which this is an amendment.

SEC. 7. *And be it further enacted*, That when any company, battalion, or regiment, in an organized form, marched more than twenty miles to the place where they were mustered into the service of the United States, or were discharged more than twenty miles from the place where such company, battalion, or regiment was organized, in all such cases, in computing the length of service of the officers and soldiers of any such company, battalion, or regiment, there shall be allowed one day for every twenty miles from the place where the company, battalion, or regiment was organized to the place where the same was mustered into the service of the United States, and also one day for every twenty miles from the place where such company, battalion, or regiment was discharged, to the place where it was organized, and from whence it marched to enter the service: *Provided*,

That such march was in obedience to the command or direction of the President of the United States, or some general officer of the United States, commanding an army or department, or the chief executive officer of the State or Territory by which such company, battalion, or regiment was called into service.

Approved, May 14, 1856.

No. 288.—An Act making a grant of lands, to the State of Iowa, in alternate sections to aid in the construction of certain railroads in said State.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be and is hereby granted to the State of Iowa, for the purpose of aiding in the construction of railroads from Burlington, on the Mississippi River, to a point on the Missouri River near the mouth of the Platte River; from the city of Davenport, via Iowa City and Fort Des Moines, to Council Bluffs; from Lyons City northwesterly to a point of intersection with the main line of the Iowa Central Air Line Railroad, near Maquoketa, thence on said main line, running as near as practicable to the forty-second parallel across the said State to the Missouri River, from the city of Dubuque to a point on the Missouri River near Sioux City, with a branch from the mouth of the Tete Des Morts to the nearest point on said road, to be completed as soon as the main road is completed to that point, every alternate section of land, designated by odd numbers, for six sections in width on each side of each of said roads. But in case it shall appear that the United States have, when the lines or routes of said roads are definitely fixed, sold any sections, or any parts thereof, granted as aforesaid, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents, to be appointed by the governor of said State, to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tiers of sections above specified, so much land, in alternate sections, or parts of sections, as shall be equal to such lands as the United States have sold or otherwise appropriated, or to which the rights of pre-emption have attached as aforesaid; which lands (thus selected in lieu of those sold and [to] which pre-emption rights have attached, as aforesaid, together with the sections, and parts of sections, designated by odd numbers as aforesaid, and appropriated as aforesaid) shall be held by the State of Iowa for the use and purpose aforesaid: *Provided*, That the land to be so located shall, in no case, be further than fifteen miles from the lines of said roads, and selected for and on account of each of said roads: *Provided further*, That the lands hereby granted for and on account of said roads severally shall be exclusively applied in the construction of that road for and on account of which such lands are hereby granted, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatsoever: *And provided further*, That any and all lands heretofore reserved to the United States, by any act of Congress, or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement, or for any other purpose whatsoever, be and the same are hereby reserved to the United States from the operation of this act, except so far as it may be found necessary to locate the routes of said railroads through such reserved lands, in which case the right of way only

shall be granted, subject to the approval of the President of the United States.

SEC. 2. *And be it further enacted*, That the sections and parts of sections of land which, by such grant, shall remain to the United States within six miles on each side of said roads, shall not be sold for less than double the minimum price of the public lands when sold; nor shall any of said lands become subject to private entry until the same have been first offered at public sale at the increased price.

SEC. 3. *And be it further enacted*, That the said lands hereby granted to the said State shall be subject to the disposal of the legislature thereof, for the purposes aforesaid, and no other; and the said railroads shall be and remain public highways for the use of the Government of the United States, free from toll or other charge upon the transportation of any property or troops of the United States.

SEC. 4. *And be it further enacted*, That the lands hereby granted to said State shall be disposed of by said State only in manner following: that is to say, that a quantity of land not exceeding one hundred and twenty sections for each of said roads, and included within a continuous length of twenty miles of each of said roads, may be sold; and when the governor of said State shall certify to the Secretary of the Interior that any twenty continuous miles of any of said roads is completed, then another quantity of land hereby granted, not to exceed one hundred and twenty sections for each of said roads having twenty continuous miles completed as aforesaid, and included within a continuous length of twenty miles of each of such roads, may be sold, and so from time to time until said roads are completed; and if any of said roads are not completed within ten years, no further sale shall be made, and the lands unsold shall revert to the United States.

SEC. 5. *And be it further enacted*, That the United States mail shall be transported over said roads, under the direction of the Post-Office Department, at such price as Congress may by law direct: *Provided*, That until such price is fixed by law, the Postmaster-General shall have the power to determine the same.

Approved, May 15, 1856.

No. 289.—An Act granting public lands, in alternate sections, to the States of Florida and Alabama, to aid in the construction of certain railroads in said States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be and is hereby granted to the State of Florida, for the purpose of aiding in the construction of railroads from St. John's River, at Jacksonville, to the waters of Escambia Bay, at or near Pensacola; and from Amelia Island, on the Atlantic, to the waters of Tampa Bay, with a branch to Cedar Key, on the Gulf of Mexico; and also a railroad from Pensacola to the State line of Alabama, in the direction of Montgomery, every alternate section of land designated by odd numbers, for six sections in width on each side of each of said roads and branch. But in case it shall appear that the United States have, when the lines or routes of said roads and branch are definitely fixed, sold any sections, or any parts thereof, granted as aforesaid, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents to be appointed by the governor of said State, to select, subject

to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tiers of sections above specified, so much land in alternate sections or parts of sections, as shall be equal to such lands as the United States have sold, or otherwise appropriated, or to which the rights of pre-emption have attached as aforesaid; which lands (thus selected in lieu of those sold and to which pre-emption rights have attached as aforesaid, together with the sections and parts of sections designated by odd numbers, as aforesaid, and appropriated as aforesaid,) shall be held by the State of Florida for the use and purpose aforesaid: *Provided*, That the land to be so located shall in no case be further than fifteen miles from the lines of said roads and branch, and selected for and on account of each of said roads and branch: *Provided further*, That the lands hereby granted for and on account of said roads and branch, severally, shall be exclusively applied in the construction of that road or branch for and on account of which such lands are hereby granted, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatsoever: *And provided further*, That any and all lands heretofore reserved to the United States by any act of Congress, or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement, or for any other purpose whatsoever, be, and the same are hereby, reserved to the United States from the operation of this act, except so far as it may be found necessary to locate the routes of said railroads or branch through such reserved lands; in which case the right of way only shall be granted, subject to the approval of the President of the United States.

SEC. 2. *And be it further enacted*, That the sections and parts of sections of land which, by such grant, shall remain to the United States within six miles on each side of said roads and branch, shall not be sold for less than double the minimum price of the public lands when sold; nor shall any of said lands become subject to private entry until the same have been first offered at public sale at the increased price.

SEC. 3. *And be it further enacted*, That the said lands hereby granted to the said State shall be subject to the disposal of the legislature thereof for the purposes aforesaid, and no other; and the said railroads and branch shall be and remain public highways for the use of the government of the United States, free from toll or other charge upon the transportation of any property or troops of the United States.

SEC. 4. *And be it further enacted*, That the lands hereby granted to said State shall be disposed of by said State only in manner following, that is to say: that a quantity of land, not exceeding one hundred and twenty sections for each of said roads and branch, and included within a continuous length of twenty miles of each of said roads and branch, may be sold; and when the governor of said State shall certify to the Secretary of the Interior that any twenty continuous miles of any or either of said roads or branch, is completed, then another quantity of land hereby granted, not to exceed one hundred and twenty sections for each of said roads or branch having twenty continuous miles completed as aforesaid, and included within a continuous length of twenty miles of each of such roads or branch, may be sold; and so, from time to time, until said roads and branch are completed; and if any or either of said roads or branch is not completed within ten years, no further sales shall be made, and the lands unsold shall revert to the United States.

SEC. 5. *And be it further enacted*, That the United States mail shall be transported over said roads and branch, under the direction of the Post-Office Department, at such price as Congress may, by law, direct; *Provided*,

That until such price is fixed by law, the Postmaster General shall have the power to determine the same.

SEC. 6. *And be it further enacted*, That a similar grant of alternate sections of public land is hereby made to the State of Alabama, to aid in the construction of a railroad from Montgomery, in said State, to the boundary line between Florida and Alabama, in the direction of Pensacola, and to connect with the road from Pensacola to said line, upon the same terms and conditions in all respects as are hereinbefore prescribed for the grant to Florida.

Approved, May 17, 1856.

No. 290.—An Act granting public lands, in alternate sections, to the State of Alabama to aid in the construction of certain railroads in said State.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be, and is hereby, granted to the State of Alabama, for the purpose of aiding in the construction of railroads; from the Tennessee River, at, or near Gunter's landing, to Gadsden, on the Coosa River; from Gadsden to connect with the Georgia and Tennessee and Tennessee line of railroads, through Chattooga, Wills, and Lookout Valleys; and from Elyton to the Tennessee River at or near Beard's Bluff, Alabama, every alternate section of land designated by odd numbers, for six sections in width on each side of each of said roads. But in case it shall appear that the United States have, when the lines or routes of said roads are definitely fixed, sold any sections or any parts thereof, granted as aforesaid, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents, to be appointed by the governor of said State, to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tiers of sections above specified, so much land, in alternate sections, or parts of sections, as shall be equal to such lands as the United States have sold, or otherwise appropriated, or to which the rights of pre-emption have attached as aforesaid, which lands (thus selected in lieu of those sold and to which pre-emption rights have attached as aforesaid, together with the sections and parts of sections designated by odd numbers, as aforesaid, and appropriated as aforesaid) shall be held by the State of Alabama, for the use and purpose aforesaid: *Provided*, That the land to be so located shall in no case be further than fifteen miles from the lines of said roads, and selected for and on account of each of said roads: *Provided further*, That the lands hereby granted for and on account of said roads, severally, shall be exclusively applied in the construction of that road for and on account of which such lands are hereby granted, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatsoever: *And provided further*, That any and all lands heretofore reserved to the United States by any act of Congress, or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement, or for any other purpose whatsoever, be, and the same are hereby, reserved to the United States from the operation of this act, except so far as it may be found necessary to locate the routes of said railroads through such reserved lands, in which case the right of way only shall be granted, subject to the approval of the President of the United States.

SEC. 2. *And be it further enacted*, That the sections and parts of sec-

tions of land which, by such grant, shall remain to the United States, within six miles on each side of said roads, shall not be sold for less than double the minimum price of the public lands when sold, nor shall any of said lands become subject to private entry until the same have been first offered at public sale at the increased price.

SEC. 3. *And be it further enacted*, That the said lands hereby granted to the said State shall be subject to the disposal of the legislature thereof, for the purposes aforesaid, and no other; and the said railroads shall be and remain public highways for the use of the government of the United States, free from toll or other charge upon the transportation of any property or troops of the United States.

SEC. 4. *And be it further enacted*, That the lands hereby granted to said State shall be disposed of by said State only in manner following, that is to say: That a quantity of land, not exceeding one hundred and twenty sections for each of said roads, and included within a continuous length of twenty miles of each of said roads, may be sold; and when the governor of said State shall certify to the Secretary of the Interior that any twenty continuous miles of any of said roads is completed, then another quantity of land hereby granted, not to exceed one hundred and twenty sections for each of said roads having twenty continuous miles completed as aforesaid, and included within a continuous length of twenty miles of each of such roads, may be sold; and so, from time to time, until said roads are completed; and if any of said roads is not completed within ten years, no further sale shall be made, and the lands unsold shall revert to the United States.

SEC. 5. *And be it further enacted*, That the United States mail shall be transported over said roads, under the direction of the Post-Office Department, at such price as Congress may, by law, direct: *Provided*, That until such price is fixed by law, the Postmaster-General shall have the power to determine the same.

SEC. 6. *And be it further enacted*, That a grant of lands shall be made to said State to aid in the construction of the following roads in said State, to wit: the Memphis and Charleston railroad, extending from Memphis on the Mississippi River, in Tennessee, to Stevenson, on the Nashville and Chattanooga railroad, in Alabama; the Girard and Mobile railroad, from Girard to Mobile, Alabama; the Northeast and Southwestern railroad, from near Gadsden to some point on the Alabama and Mississippi State line, in the direction to the Mobile and Ohio railroad, with a view to connect with said Mobile and Ohio railroad; the Coosa and Alabama railroad, from Selma to Gadsden; the Central railroad from Montgomery to some point on the Alabama and Tennessee State line in the direction to Nashville, Tennessee; and that alternate sections of the public lands to the same extent and in the same manner, and upon the same limitations and restrictions in every respect, shall be and is hereby made to aid in the construction of the roads in said State mentioned in this act: *Provided*, That the lands hereby granted to said State for the purpose of constructing a railroad from the northeast to the southwestern portion of said State, lying northwest of Elyton, shall be assigned to such road as may be designated by the legislature of said State.*

Approved, June 3, 1856.

* Amended 3d of March, 1857. See No. 313.

No. 291.—An Act making a grant of lands to the State of Louisiana, to aid in the construction of railroads in said State.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be and is hereby granted to the State of Louisiana, for the purpose of aiding in the construction of a railroad from the Texas line, in the State of Louisiana, west of the town of Greenwood; via Greenwood, Shreveport, and Monroe, to a point on the Mississippi River, opposite Vicksburg; and from New Orleans by Opelousas, to the State line of Texas; and from New Orleans to the State line, in the direction to Jackson, Mississippi; every alternate section of land designated by odd numbers, for six sections in width on each side of said road. But in case it shall appear that the United States have, when the line or route of said road is definitely fixed, sold any sections, or any parts thereof, granted as aforesaid, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents, to be appointed by the governor of said State, to select, subject to the approval of the Secretary of the Interior, from the lands of the United States, nearest to the tier of sections above specified, so much in alternate sections, or parts of sections, as shall be equal to such lands as the United States have sold, or otherwise appropriated, or to which the right of pre-emption has attached as aforesaid; which lands (thus selected in lieu of those sold, and to which pre-emption rights have attached as aforesaid, together with the sections and parts of sections designated by odd numbers as aforesaid, and appropriated as aforesaid,) shall be held by the State of Louisiana for the use and purpose aforesaid: *Provided*, That the lands to be so located shall in no case be further than fifteen miles from the line of said roads and selected for and on account of said roads: *Provided further*, That the lands hereby granted shall be exclusively applied in the construction of said roads, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatsoever: *And provided further*, That any and all lands heretofore reserved to the United States by any act of Congress, or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement, or for any other purpose whatsoever, be, and the same are hereby, reserved to the United States, from the operation of this act, except so far as it may be found necessary to locate the route of said railroads through such reserved lands, in which case the right of way only shall be granted, subject to the approval of the President of the United States.

SEC. 2. *And be it further enacted*, That the sections, and parts of sections, of land which, by such grant, shall remain to the United States, within six miles on each side of said roads, shall not be sold for less than double the minimum price of the public lands when sold; nor shall any of said lands become subject to private entry until the same have been first offered at public sale at the increased price.

SEC. 3. *And be it further enacted*, That the said lands hereby granted to the said State, shall be subject to the disposal of the legislature thereof, for the purposes aforesaid, and no other; and the said railroads shall be and remain a public highway for the use of the government of the United States, free from toll or other charge upon the transportation of any property or troops of the United States.

SEC. 4. *And be it further enacted*, That the lands hereby granted to said State, shall be disposed of only in manner following; that is to say, that a quantity of land not exceeding one hundred and twenty sections, and in-

cluded within a continuous length of twenty miles of said roads, may be sold; and when the governor of said State shall certify to the Secretary of the Interior that any twenty continuous miles of said roads are completed, then another like quantity of land hereby granted may be so sold; and so, from time to time, until said roads are completed; and if said roads are not completed within ten years, no further sale shall be made, and the lands unsold shall revert to the United States.

SEC. 5. *And be it further enacted*, That the United States mail shall be transported over said roads under the direction of the Post Office Department, at such price as Congress may, by law, direct: *Provided*, That until such price is fixed by law, the Postmaster-General shall have the power to determine the same.

Approved, June 3, 1856.

No. 292.—An Act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be, and is hereby, granted to the State of Wisconsin for the purpose of aiding in the construction of a railroad from Madison, or Columbus, by the way of Portage City to the St. Croix River or Lake between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior; and to Bayfield; and also from Fon du Lac on Lake Winnebago, northerly to the State line, every alternate section of land designated by odd numbers for six sections in width on each side of said roads respectively. But in case it shall appear that the United States have, when the lines or routes of said roads are definitely fixed, sold any sections or parts thereof granted as aforesaid, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents, to be appointed by the governor of said State, to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tier of sections above specified, so much land in alternate sections, or parts of sections, as shall be equal to such lands as the United States have sold or otherwise appropriated, or to which the right of pre-emption has attached, as aforesaid, which lands (thus selected in lieu of those sold and to which pre-emption has attached as aforesaid, together with the sections and parts of sections designated by odd numbers as aforesaid, and appropriated as aforesaid,) shall be held by the State of Wisconsin for the use and purpose aforesaid: *Provided*, That the lands to be so located shall in no case be further than fifteen miles from the line of the roads in each case, and selected for and on account of said roads: *Provided further*, That the lands hereby granted shall be exclusively applied in the construction of that road for which it was granted and selected, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatsoever: *And provided further*, That any and all lands reserved to the United States by any act of Congress for the purpose of aiding in any object of internal improvement, or in any manner for any purpose whatsoever, be, and the same are hereby, reserved to the United States from the operation of this act, except so far as it may be found necessary to locate the route of said railroads through such reserved lands, in which case the right of way only

shall be granted, subject to the approval of the President of the United States.

SEC. 2. *And be it further enacted*, That the sections and parts of sections of land which, by such grant, shall remain to the United States, within six miles on each side of said roads, shall not be sold for less than double the minimum price of the public lands when sold : nor shall any of said lands become subject to private entry until the same have been first offered at public sale at the increased price.

SEC. 3. *And be it further enacted*, That the said lands hereby granted to said State shall be subject to the disposal of the legislature thereof, for the purposes aforesaid, and no other ; and the said railroads shall be and remain public highways for the use of the government of the United States free from toll or other charge upon the transportation of property or troops of the United States.

SEC. 4. *And be it further enacted*, That the lands hereby granted to said State shall be disposed of by said State only in manner following, that is to say ; that a quantity of land not exceeding one hundred and twenty sections, and included within a continuous length of twenty miles of roads, respectively, may be sold ; and when the governor of said State shall certify to the Secretary of the Interior that any twenty continuous miles of either of said roads are completed, then another like quantity of land hereby granted may be sold ; and so from time to time until said roads are completed ; and if said roads are not completed within ten years, no further sales shall be made, and the lands unsold shall revert to the United States.

SEC. 5. *And be it further enacted*, That the United States mail shall be transported over said roads, under the direction of the Post-Office Department, at such price as Congress may, by law, direct : *Provided*, That until such price is fixed by law, the Postmaster-General shall have the power to determine the same.

Approved, June 3, 1856.

No. 293.—An Act making a grant of alternate sections of the public lands, to the State of Michigan, to aid in the construction of certain railroads in said State, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be and hereby is granted to the State of Michigan, to aid in the construction of railroads from Little Bay de Noquet to Marquette, and thence to Ontonagon, and from the two last named places to the Wisconsin State line ; and also from Amboy, by Hillsdale and Lansing, and from Grand Rapids to some point on or near Traverse Bay ; also from Grand Haven and Pere Marquette to Flint, and thence, to Port Huron, every alternate section of land designated by odd numbers ; for six sections in width on each side of each of said roads ; but in case it shall appear that the United States have, when the lines or routes of said roads are definitely fixed, sold any section or any part thereof granted as aforesaid, or that the right of pre-emption has attached to the same, then, it shall be lawful for any agent or agents, to be appointed by the governor of said State, to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tiers of sections above specified, so much land in alternate sections or parts of sections as shall be equal to such lands as the United States have sold

or otherwise appropriated, or to which the right of pre-emption has attached as aforesaid; which lands (thus selected in lieu of those sold, and to which pre-emption rights have attached as aforesaid, together with the sections and parts of sections designated by odd numbers as aforesaid, and appropriated as aforesaid) shall be held by the State of Michigan for the use and purpose aforesaid: *Provided*, That the lands to be so located shall in no case be further than fifteen miles from the lines of said roads, and selected for, and on account of each of said roads: *Provided further*, That the lands hereby granted shall be exclusively applied in the construction of that road for and on account of which such lands are hereby granted, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatsoever: *And provided further*, That any and all lands heretofore reserved to the United States by any act of Congress, or in any other manner, by competent authority, for the purpose of aiding in any object of internal improvement, or for any other purpose whatsoever, be and the same are hereby reserved to the United States from the operations of this act, except so far as it may be found necessary to locate the routes of said railroads through such reserved lands, in which case, the right of way only shall be granted, subject to the approval of the President of the United States.

SEC. 2. *And be it further enacted*, That the sections and parts of sections of land which, by such grant, shall remain to the United States, within six miles on each side of each of said roads, shall not be sold for less than double the minimum price of the public lands when sold; nor shall any of said lands become subject to private entry until the same have been first offered at public sale at the increased price.

SEC. 3. *And be it further enacted*, That the said lands hereby granted to the said State, shall be subject to the disposal of the legislature thereof, for the purposes aforesaid and no other; and the said railroads shall be and remain public highways for the use of the government of the United States, free from toll or other charge upon the transportation of any property or troops of the United States.

SEC. 4. *And be it further enacted*, That the lands hereby granted to said State shall be disposed of by said State only in manner following, that is to say: That a quantity of land not exceeding one hundred and twenty sections for each of said roads, and included within a continuous length of twenty miles of each of said roads, may be sold; and when the governor of said State shall certify to the Secretary of the Interior that any twenty continuous miles of any of said roads is completed, then another quantity of land hereby granted, not to exceed one hundred and twenty sections for each of said roads having twenty continuous miles completed as aforesaid, and included within a continuous length of twenty miles of each of such roads may be sold; and so from time to time until said roads are completed; and if any of said roads is not completed within ten years, no further sales shall be made, and the lands unsold shall revert to the United States.

SEC. 5. *And be it further enacted*, That the United States mail shall be transported over said roads, under the direction of the Post-Office Department, at such price as Congress may, by law, direct: *Provided*, That until such price is fixed by law, the Postmaster-General shall have the power to determine the same.

Approved, June 3, 1856.

No. 294.—An Act to revive and continue in force the provisions of the Act of 1853, in relation to “suspended entries of public lands,” and the Act of 1846, in relation to “suspended pre-emption land claims.”*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the several provisions of the act approved March third, eighteen hundred and fifty-three, in relation to “suspended entries of public lands,” and the several provisions of the act approved August third, eighteen hundred and forty-six, in relation to “suspended pre-emption land claims,” be and the same are hereby revived and continued in force, and those provisions are hereby declared to be applicable to all cases of suspended entries and locations which have arisen since said acts were passed, or which were omitted to be acted upon under either of said acts, as well as to all cases of a similar kind which may hereafter occur, and shall be regarded as applying to locations under bounty land warrants as well as to ordinary entries or sales, and to all other pre-emption cases or locations, where the law has been substantially complied with, and the error or informality has arisen from ignorance, accident or mistake, and is satisfactorily explained, and where the rights of no other claimant or pre-emptor will be prejudiced, or where there is no adverse claim.

Approved, June 26, 1856.

No. 295.—An Act granting to certain citizens of the State of Missouri the right to enter certain lands in the Plattsburg District, in said State.

Whereas the State of Missouri, under the provisions of the eighth section of the act of Congress of the fourth September, eighteen hundred and forty-one, selected certain lands in the Plattsburg district, in the said State of Missouri, which lands were thereupon withheld from sale by the United States;† and whereas the said State of Missouri permitted entries thereof to be made at the State land-office, and whereas, also, the said selections by the State of Missouri were subsequently rejected and not confirmed to the said State; now therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in all cases where persons purchased such lands from the said State of Missouri, by entry at the State land-office, the title to which lands is still in the United States, such persons so having purchased the same, or their assignees, in case the same shall have been sold and conveyed, shall be permitted to enter the same at the proper land-office of the United States, at the price of one dollar and twenty-five cents per acre: *Provided,* That in all cases where entries of such lands have been permitted to be made at the proper United States land-office, at one dollar and twenty-five cents per acre, by persons who had purchased the same from the State of Missouri, or their assignees, such entries or sales shall be, and the same are hereby, confirmed: *Provided further,* That nothing in this act contained shall be construed so as to interfere with the rights of third parties.

Approved, July 3, 1856.

* See No. 110.

† See No. 48.

No. 296.—An Act to explain the act approved twelfth April, eighteen hundred and fifty-four, entitled “An act to establish additional land districts in the Territory of Minnesota.”

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the words “west of the Mississippi River,” employed in the description in the first section of the act of twelfth April, eighteen hundred and fifty-four, entitled “An act to establish additional land districts in the Territory of Minnesota,” shall be construed so as to embrace all the islands lying west of the middle of the main channel of said river, in the new districts created west of the same by said act.*

Approved, July 8, 1856.

No. 297.—An Act to establish two additional land districts in the Territory of Minnesota.†

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all that portion of the Territory of Minnesota which lies north of the line dividing townships forty-five and forty-six, north of the base line east of the Mississippi River and north of the nearest township line, to be determined hereafter by the commissioner of the General Land Office, west of said river, extending thence west of the Missouri River, be, and the same is hereby divided into and shall constitute two additional land districts, to wit: All that portion lying east of the line dividing ranges eighteen and nineteen west of the fourth principal meridian shall constitute a land district, to be called the northeastern land district; and all that portion west of the line dividing said ranges eighteen and nineteen shall constitute an additional land district in said territory, to be called the northwestern land district, the location of the offices for which shall be designated by the President of the United States, and shall by him from time to time be changed, as the public interests may seem to require.

SEC. 2. *And be it further enacted,* That the President be, and he is hereby authorized, whenever in his judgment the public interests shall require, to appoint, by and with the advice and consent of the Senate, or during the recess thereof, and until the end of the next session of Congress after such appointment, a register and a receiver for each or either of the districts hereby created, who shall respectively be required to reside at the site of their offices, have the same powers, responsibilities, and emoluments, and be subject to the same acts and penalties, which are or may be prescribed by law, in relation to other land offices of the United States.

SEC. 3. *And be it further enacted,* That the President is authorized to cause the public lands in said districts, with the exception of such as have been or may be reserved for other purposes, to be exposed to sale, in the same manner and upon the same terms and conditions as other public lands of the United States.

SEC. 4. *And be it further enacted,* That for the survey, at augmented rates, of meridian, standard parallel, township, and section lines, in the

* See No. 236.

† See No. 324.

districts hereby created, the sum of forty thousand dollars be and the same is hereby appropriated.

Approved, July 8, 1856.

No. 298.—An Act to authorize the President of the United States to cause the southern boundary line of Kansas Territory to be surveyed and marked.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States is hereby authorized and directed to cause the southern boundary line of the Territory of Kansas, between the State of Missouri and the Territory of New Mexico, to be surveyed and distinctly marked, and a plat of said survey, shall be deposited in the office of the Secretary of the Interior, and another plat of said survey shall be deposited in the office of the Secretary of the Territory of Kansas.

Approved, July 8, 1856.

No. 299.—An Act granting public lands in alternate sections to the State of Mississippi to aid in the construction of railroads in said State, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be, and is hereby, granted to the State of Mississippi, for the purpose of aiding in the construction of railroads from Jackson to the line between the State of Mississippi and the State of Alabama; from Tuscaloosa to the Mobile railroad within Mississippi; and from Brandon to the Gulf of Mexico, every alternate section of land designated by even numbers, for six sections in width on each side of each of said roads. But in case it shall appear that the United States have, when the lines or routes of said roads are definitely fixed, sold any sections or any parts thereof granted as aforesaid, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents, to be appointed by the governor of said State, to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tiers of sections above specified, so much land in alternate sections or parts of sections as shall be equal to such lands as the United States shall have sold or otherwise appropriated, or to which the right of pre-emption has attached as aforesaid; which lands (thus selected in lieu of those sold, and to which pre-emption rights have attached as aforesaid, together with the sections and parts of sections designated by even numbers as aforesaid, and appropriated as aforesaid) shall be held by the said State for the use and purpose aforesaid: *Provided,* That the lands to be so located shall in no case be further than fifteen miles from the lines of said roads, and selected for, and on account of each of said roads: *Provided further,* That the lands hereby granted shall be exclusively applied in the construction of that road for and on account of which said lands are hereby granted, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatsoever: *And provided further,* That any and all lands heretofore reserved to the United

States by any act of Congress, or in any other manner, by competent authority, for the purpose of aiding in any object of internal improvement, or for any other purpose whatsoever, be and the same are hereby reserved to the United States from the operation of this act, except so far as it may be found necessary to locate the routes of said railroads through such reserved lands, in which case, the right of way only shall be granted, subject to the approval of the President of the United States.

SEC. 2. *And be it further enacted*, That the sections and parts of sections of land, which, by such grant, shall remain to the United States, within six miles on each side of said roads, shall not be sold for less than double the minimum price of the public lands when sold; nor shall any of the said lands become subject to private entry until the same have been first offered at public sale at the increased price.

SEC. 3. *And be it further enacted*, That the said lands hereby granted to the said State, shall be subject to the disposal of the legislature thereof, for the purpose aforesaid and no other; and the said railroads shall be and remain public highways for the use of the government of the United States, free from toll or other charge upon the transportation of any property or troops of the United States.

SEC. 4. *And be it further enacted*, That the lands hereby granted to the said State shall be disposed of by said State only in manner following, that is to say: That a quantity of land not exceeding one hundred and twenty sections for each of said roads, and included within a continuous length of twenty miles of each of said roads, may be sold; and when the governor of said State shall certify to the Secretary of the Interior that any continuous twenty miles of either of said roads is completed, then another like quantity of land hereby granted, not exceeding one hundred and twenty sections for such road may be sold; and so from time to time until said roads are completed; and if said roads are not completed within ten years, no further sales shall be made, and the lands unsold shall revert to the United States.

SEC. 5. *And be it further enacted*, That the United States mail shall be transported over said railroads, under the direction of the Post-Office Department, at such price as Congress may, by law, direct: *Provided*, That until such price is fixed by law, the Postmaster-General shall have the power to determine the same.

SEC. 6. *And be it further enacted*, That a like grant to the same extent, and on the same terms and conditions in all respects, is hereby made to aid in constructing a railroad from the city of Mobile to New Orleans, such grant to be made to the several States through which said road shall pass, so far as said road is within their respective limits.

Approved, August 11, 1856.

No. 300.—An Act to confirm to certain persons therein named, their titles to certain lots in Prairie du Chien, Wisconsin.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all those farm and village lots at Prairie du Chien, in the State of Wisconsin, as designated upon the plat of the private land claims at said place, in volume four of the public lands American State Papers, which plat was made in the year of our Lord eighteen hundred and twenty, by Isaac Lee, Esquire, the agent appointed by the commissioners to adjust land titles at Green Bay and Prairie du

Chien, which have not heretofore been confirmed and patented to the claimants, are hereby confirmed unto the several persons named upon said plat and the report of said Lee, and to their assigns and legal representatives; and village lots numbers six, ten, and eleven, in the main village, as designated upon said plat, are hereby confirmed to Hercules L. Dousman; and lot number nine, in said village, to Edward W. Pelton; and patents to the lots hereby confirmed, shall issue to such persons as now own, or as shall have the right to the same: *Provided*, That the confirmation hereby made shall not interfere with any heretofore made, and that such confirmation shall only operate as a relinquishment of title on the part of the United States, and shall in no manner interfere with any valid adverse right of any persons, if such exist, to the same land.

Approved, August 11, 1856.

No. 301.—An Act making appropriations for certain civil expenses of the Government, for the year ending the thirtieth of June, eighteen hundred and fifty-seven.

* * * * *

For continuing the survey of the keys off the coast of Florida by the officers of the coast survey, thirty thousand dollars.

That all public lands heretofore reserved for military purposes in the State of Florida, which said lands, in the opinion of the Secretary of War, are no longer useful or desired for such purposes, or so much thereof as said Secretary may designate, shall be and are hereby placed under the control of the General Land Office, to be disposed of and sold in the same manner and under the same regulations as other public lands of the United States: *Provided*, that said lands shall not be so placed under the control of said General Land Office until said opinion of the Secretary of War, giving his consent, communicated to the Secretary of Interior in writing, shall be filed and recorded.*

* * * * *

Approved, August 18, 1856.

No. 302.—An Act to fix the graduation periods for lands in the Greensburg District, in the State of Louisiana.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in classifying the unsold and unappropriated public lands in the district of Greensburg, subject to sale, in the State of Louisiana, under the act entitled, "An act to graduate and reduce the price of the public lands to actual settlers and cultivators," approved August fourth, eighteen hundred and fifty-four, the respective periods therein referred to shall be computed from the dates on which the lands became subject to private entry, after the first or original offering of the same.

Approved, August 18, 1856.

* See Nos. 315, 344.

No. 303.—An Act to continue the land offices at Vincennes, Indiana, and to ascertain and adjust the titles to certain lands in the States of Indiana and Illinois, formerly included within the Vincennes land district.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the register and receiver of the land-offices at Vincennes, to be appointed, together with a fit and proper person learned in the law, and a citizen of Indiana, to be appointed by the President of the United States, are hereby constituted commissioners to ascertain and adjust the title of any claimant to any tract of land, or any part or subdivision thereof, granted by the resolution of Congress of the twenty-ninth of August, seventeen hundred and ninety-one, entitled "An act for granting lands to the inhabitants and settlers at Vincennes, and the Illinois country, in the territory northwest of the Ohio, and for confirming them in their possessions," and the several acts in aid of and supplementary thereto.

SEC. 2. *And be it further enacted,* That every such claimant to any tract of land so granted, or any part or subdivision thereof, shall, within three months after the publication of the notice herein provided for, file his claim in writing with the said register, in which he shall specifically set forth such facts as shall be required in the instructions of the Commissioner of the General Land Office: *Provided,* That in any case in which good cause may be shown why the claim was not filed within the period stipulated, such claim may be presented and acted upon at any time before the expiration of the commission.

SEC. 3. *And be it further enacted,* That such register, upon the receipt of such instructions, shall give notice in the several newspapers of general circulation within said district and in the vicinity of said lands, by publication, of his readiness to receive applications of claimants, to which notice shall be appended the instructions of the Commissioner and a copy of this act.

SEC. 4. *And be it further enacted,* That said commissioners shall meet immediately after the time allowed for filing such claims, and shall hold their sessions at the town of Vincennes. They shall have power to issue subpoenas, and compel the attendance of witnesses, administer all necessary oaths, and to hear and decide, in a summary manner, all matters respecting such claims. Minutes of the proceedings, decisions, meetings, and adjournments of the board, shall be regularly entered in a book kept for that purpose.

SEC. 5. *And be it further enacted,* That every claimant to any tract of land so granted, or any subdivision thereof, who can produce to such commissioner a regular chain of title from the original confirmee or donee to himself, or who can show to their satisfaction a continuous and connected possession in himself, and those under whom he claims, for a period of twenty years or more next preceding the filing of his claim, or can show such a claim or title as would, in the courts of Indiana, bar an action of ejectment, such claimant shall be confirmed in his title.

SEC. 6. *And be it further enacted,* That said commissioners shall, in one year from the date of organizing said commission under this act, or sooner, if the cases on their docket are all disposed of, transmit to the Commissioner of the General Land Office a transcript of their decisions in favor of claimants, which shall contain a fair statement of the evidence on which each respective claim is founded; and also a transcript of their decisions against claimants, with a like statement of the evidence, and the reason of such rejection.

SEC. 7. *And be it further enacted*, That the Commissioner of the General Land-Office, upon the receipt of such transcript of their decisions, shall issue a patent to such claimant so confirmed in his title by the said commissioners; and where any such claims have been rejected, the said Commissioner, upon application of the proper person, shall have power to revise such decision of the said board, and may, if in his opinion the evidence warrants it, reverse such decision, and issue a patent therefor to such claimant: *Provided*, That this right to revise shall not extend to those claims rejected, where the same lands have been confirmed by the said board to some other claimant: *And provided further*, That the patents so issued shall only be a relinquishment of the title of the United States, and shall not be considered or construed into an abridgment of the rights of third persons.

SEC. 8. *And be it further enacted*, That immediately after the passage of this act, the Commissioner of the General Land Office shall give directions to the register and receiver of the land-offices at Indianapolis forthwith to transfer to the land-offices at Vincennes the books, documents, maps, plats, surveys, and all other papers and writings deposited in the land-offices at Indianapolis by the register and receiver of the land-offices at Vincennes, and which originally were deposited in the land-offices at Vincennes, and were transferred from said offices to the land-offices at Indianapolis, under the provisions of the act "for abolishing land-offices under certain circumstances, and for other purposes,"* approved June the twelfth, eighteen hundred and forty; and the said land offices at Vincennes are hereby re-established and reorganized, as fully and effectually for the transaction of business and the sales of the public lands within said Vincennes land district, as if said land-offices had not been abolished by the provisions of the act last aforesaid.

SEC. 9. *And be it further enacted*, That the commissioner, appointed under this act by the President, shall receive as a full compensation for his services, a salary at the rate of three thousand dollars per annum, payable quarterly out of the treasury; and the register and receiver shall receive such compensation for their services under this act as may be just and proper, in the discretion of the Commissioner of the General Land-Office.

SEC. 10. *And be it further enacted*, That it shall be the duty of the Commissioner of the General Land-Office, to prescribe such rules and regulations as may be necessary to give full effect to the provisions of this act.

Approved, August 18, 1856.

No. 304.—Joint Resolution relating to the public lands appertaining to the Springfield and Harper's Ferry Armories, and the North Carolina Arsenal.

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of War be and he is hereby authorized, to exchange and convey the unoccupied lands and appurtenances belonging to the United States, known as the Lower Water shops, at the Springfield Armory, in the State of Massachusetts, for such other lands contiguous to the lands attached to said Armory upon the hill at Springfield, as he may deem necessary and proper for the improvement and convenience of said Armory, or in his discretion to sell the

* See No. 42.

said tract known as the lower workshops and appurtenances, and to invest the proceeds of the same, or such part thereof as may be required, in the purchase of such lots or lands contiguous to the said Armory on the hill, as he may deem suitable and proper. For this purpose, he is hereby authorized to convey the title of the United States to the lands and appurtenances hereby authorized to be sold and conveyed, and to receive from individuals or corporate proprietors, deeds and titles to the lands so exchanged, sold or purchased.

SEC. 2. *And be it further resolved*, That the Secretary of War be and he is hereby authorized to apply so much of the proceeds of the recent sale of land and lots at Harper's Ferry, as he may deem advisable, to the purchase of such other lots at that place, as he may deem necessary to the safety and convenience of the public buildings belonging to the United States, and that he apply the residue of the proceeds of said sales to the improvement of the property retained by the United States.

SEC. 3. *And be it further resolved*, That the Secretary of War be also authorized to make sale of such portion of the site of the United States arsenal at Fayetteville, North Carolina, as in his judgment is not required for public purposes, and apply the proceeds of such sale, or so much as may be necessary, to the purchase of such additional land for the use of said arsenal, as he may deem necessary. He is for this purpose, authorized to convey the title of the United States for the lands which he may sell, to the purchaser, and to receive proper deeds and titles for the lands which may be purchased by him, as aforesaid.

Approved, April 23, 1856.

No. 305.—An Act to authorize the people of the Territory of Minnesota to form a Constitution and State Government, preparatory to their admission in the Union on an equal footing with the original States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the inhabitants of that portion of the Territory of Minnesota which is embraced within the following limits, to wit: Beginning at the point in the centre of the main channel of the Red River of the North, where the boundary line between the United States and the British possessions crosses the same; thence up the main channel of said river to that of the Boix des Sioux River; thence [up] the main channel of said river to Lake Travers; thence up the centre of said lake to the southern extremity thereof; thence in a direct line to the head of Big Stone Lake; thence through its centre to its outlet; thence by a due south line to the north line of the State of Iowa; thence east along the northern boundary of said State to the main channel of the Mississippi River; thence up the main channel of said river, and following the boundary line of the State of Wisconsin, until the same intersects the Saint Louis River; thence down said river to and through Lake Superior, on the boundary line of Wisconsin and Michigan, until it intersects the dividing line between the United States and the British possessions; thence up Pigeon River, and following said dividing line to the place of beginning—he and they are hereby authorized to form for themselves a Constitution and State Government, by the name of the State of Minnesota, and to come into the Union on an equal footing with the original States, according to the federal constitution.

SEC. 2. *And be it further enacted*, That the said State of Minnesota shall have concurrent jurisdiction on the Mississippi and all other rivers and waters bordering on the said State of Minnesota, so far as the same shall form a common boundary to said State and any other State or States now or hereafter to be formed or bounded by the same; and said river and waters, and the navigable waters leading into the same, shall be common highways, and forever free, as well to the inhabitants of said State as to all other citizens of the United States, without any tax, duty, impost, or toll, therefor.

* * * * *

SEC. 5. *And be it further enacted*, That the following propositions be, and the same are hereby offered to the said convention of the people of Minnesota for their free acceptance or rejection, which, if accepted by the convention, shall be obligatory on the United States and upon the said State of Minnesota, to wit:

First. That sections numbered sixteen and thirty-six in every township of public lands in said State, and where either of said sections, or any part thereof, has been sold or otherwise been disposed of, other lands, equivalent thereto and as contiguous as may be, shall be granted to said State for the use of schools.

Second. That seventy-two sections of land shall be set apart and reserved for the use and support of a State university, to be selected by the Governor of said State, subject to the approval of the Commissioner of the General Land-Office, and to be appropriated and applied in such manner as the legislature of said State may prescribe for the purpose aforesaid, but for no other purpose.

Third. That ten entire sections of land, to be selected by the Governor of said State, in legal subdivisions, shall be granted to said State for the purpose of completing the public buildings, or for the erection of others at the seat of government, under the direction of the legislature thereof.

Fourth. That all salt springs within said State, not exceeding twelve in number, with six sections of land adjoining, or as contiguous as may be to each, shall be granted to said State for its use; the same to be selected by the Governor thereof within one year after the admission of said State, and when so selected, to be used or disposed of on such terms, conditions, and regulations as the legislature shall direct: *Provided*, That no salt spring or land, the right whereof is now vested in any individual or individuals, or which may be hereafter confirmed or adjudged to any individual or individuals, shall, by this article, be granted to said State.

Fifth. That five per centum of the net proceeds of sales of all public lands lying within said State, which shall be sold by Congress after the admission of the said State into the Union, after deducting all the expenses incident to the same, shall be paid to said State, for the purpose of making public roads and internal improvements, as the legislature shall direct: *Provided*, The foregoing propositions herein offered are on the condition, that the said convention which shall form the constitution of said State shall provide, by a clause in said constitution, or an ordinance, irrevocable without the consent of the United States, that said State shall never interfere with the primary disposal of the soil within the same, by the United States, or with any regulations Congress may find necessary for securing the title in said soil to *bona fide* purchasers thereof; and that no tax shall be imposed on lands belonging to the United States, and that in no case shall non-resident proprietors be taxed higher than residents.

Approved, February 26, 1857.

No. 306.—An Act making appropriations for the current and contingent expenses of the Indian department and for fulfilling treaty stipulations with various Indian tribes, for the year ending June thirtieth, eighteen hundred and fifty-eight.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums be and they are hereby appropriated, out of any money in the treasury not otherwise appropriated, for the purpose of paying the current and contingent expenses of the Indian department, and fulfilling treaty stipulations with the various Indian tribes :—

* * * * *

For defraying the expenses of the removal and subsistence of Indians of Washington Territory to the reservations therein, aiding them in procuring their own subsistence, purchase of provisions and presents, and compensation of laborers and necessary employees, sixty thousand dollars : *Provided,* That a part of said sum, not exceeding four thousand nine hundred and seventeen dollars, may, by direction of the Secretary of the Interior be applied for the payment of the just value of lands, improvements and pre-emption claims, owned by whites located within the Indian reservation established on the south side of the Commencement Bay, in Washington Territory, for the Puyallup and other bands of Indians, on the relinquishment of said lands, improvements and claims to the United States.

* * * * *

Approved, March 3, 1857.

No. 307.—An Act to establish an additional land district in the State of Wisconsin.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of the districts of lands now subject to sale at La Crosse and Hudson, in the State of Wisconsin, as are contained within the following boundaries, shall constitute a new land district, to be called the Chippewa district, to wit : north of the line dividing townships twenty-four and twenty-five north ; south of the line dividing townships forty and forty-one north ; west of the line dividing ranges one and two east, and east of the line dividing ranges eleven and twelve west ; the location of the office for which shall be designated by the President of the United States, and shall by him from time to time be changed as the public interest may seem to require.

SEC. 2. *And be it further enacted,* That there shall be appointed by the President, by and with the advice and consent of the Senate, or during the recess thereof and until the end of its next session after such appointment, a register and receiver for said district, who shall respectively be required to reside at the site of the office, be subject to the same laws, and entitled to the same compensation as is or may hereafter be prescribed by law in relation to other land officers of the United States.

SEC. 3. *And be it further enacted,* That the sales shall continue at the old land offices at La Crosse and Hudson till the registers and receivers thereat are notified that the officers for the district created by this act are prepared to enter on their duties.

SEC. 4. *And be it further enacted,* That to meet the expenses of carrying this act into effect, the sum of five thousand dollars, or as much thereof as may be necessary, is hereby appropriated for salaries, commissions and

incidental expenses of the offices of the register and receiver, to be expended under the direction of the Commissioner of the General Land Office.

Approved, March 3, 1857.

No. 308.—An Act to confirm certain entries of land therein named.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all entries of the public land[s] under the act to graduate and reduce the price of the public lands subject to entry, to actual settlers and cultivators, approved fourth of August, eighteen hundred and fifty-four,* made prior to the passage of this act, in which the purchaser has made the affidavit and paid the purchase-money as required by said act and the instructions issued and in force, and in the hands of the register at the time of making said entry, are hereby legalized, and patents shall issue to the parties respectively, excepting those entries under said act, which the Commissioner of the General Land Office may ascertain to have been fraudulently or evasively made: *Provided*, That this act shall not be so construed as to confirm any of said entries which have heretofore been annulled and vacated by said commissioner on account of fraud, evasion of law, or other special cause: *And provided further*, That nothing herein contained shall be so construed as to deprive any actual settler and cultivator of his right to any land on which he resided at the time of an entry by another person under the act to which this act is an amendment.

Approved, March 3, 1857.

No. 309.—An Act to establish three additional land districts in the Territory of Nebraska.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all that portion of the Territory of Nebraska at present included in the Omaha district, which lies south of the line which divides townships six and seven north, extended from the Missouri River westward, shall constitute an additional district, to be called the "Nemaha Land District;" all said Omaha district which is situated south of the south shore or right bank of the Platte River, and north of the said township line, between townships six and seven north, shall constitute an additional land district, to be called the "South Platte River Land District;" and all that portion of said Omaha district which lies north of the south boundary of the "Omaha Reserve," extended westward, being identical with the line which divides townships twenty-three and twenty-four north, shall constitute an additional land district, to be called the "Dahkota Land District:" the location of the offices for which shall be designated by the President of the United States, and shall by him, from time to time, be changed as the public interests may seem to require.

* See No. 251.

SEC. 2. *And be it further enacted*, That the President be, and he is hereby, authorized to appoint, by and with the advice and consent of the Senate, or during the recess thereof, and until the end of the next session of Congress after such appointment, a register and a receiver for each land district hereby created, who shall be required to reside at the site of their offices, have the same powers, responsibilities, and emoluments, and be subject to the same acts and penalties, which are or may be prescribed by law in relation to other land officers of the United States.

SEC. 3. *And be it further enacted*, That the President is hereby authorized to cause the public lands in said districts, with the exception of such as may have been or may be reserved for other purposes, to be exposed to sale in the same manner and upon the same terms and conditions as other public lands of the United States: *Provided*, That all sales and locations made at Omaha city, of lands situated within the limits of the new districts hereby created, which shall be valid and right in other respects up to the day on which the new offices shall respectively go into operation, be and the same are hereby confirmed.

Approved, March 3, 1857.

No. 310.—An Act to establish three additional land districts in the Territory of Kansas.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all that portion of the "Pawnee land district," in the Territory of Kansas, created by the thirteenth section of the act approved twenty-second July, eighteen hundred and fifty-four, entitled "An act to establish the offices of surveyor-general of New Mexico, Kansas, and Nebraska, to grant donations to actual settlers therein, and for other purposes,"* which is situated north of the north or left bank of the Kansas River, and east of the line which divides ranges eight and nine east, shall constitute a separate district, to be called the "Delaware land district," all that portion of said Pawnee district which is situated south of the nearest township line to the parallel of thirty-eight degrees of north latitude, to be hereafter determined by the Commissioner of the General Land Office, shall constitute an additional district, to be called the "Osage land district," and all that portion of said Pawnee district which lies west of the line dividing ranges eight and nine east and north of the nearest township line to the parallel of thirty-eight degrees of north latitude, shall constitute a district to be called the "Western District," land district," the location of the offices for which shall be designated by the President of the United States, and shall by him, from time to time, be changed as the public interests may seem to require.

SEC. 2. *And be it further enacted*, That the President be, and he is hereby, authorized, whenever the public interests shall require, to appoint, by and with the advice and consent of the Senate, or during the recess thereof, and until the end of the next session of Congress after such appointment, a register and a receiver for each or either of the districts hereby created, who shall respectively be required to reside at the site of their offices, have the same powers, responsibilities, and emoluments, and be subject to the same acts and penalties, which are or may be prescribed by law in relation to other land officers of the United States.

* See No. 245.

SEC. 3. *And be it further enacted*, That the President is hereby authorised to cause the public lands in the districts created by this act, with the exception of such as may have been or may be reserved for other purposes, to be exposed to sale in the same manner, and upon the same terms and conditions as other public lands of the United States : *Provided*, That all sales and locations made at the office of the old district of lands situated within the limits of the new districts, which shall be valid and right in other respects, up to the day on which the new offices shall go into operation, be and the same are hereby confirmed.

Approved, March 3, 1857.

No. 311.—An Act making appropriations for the service of the post-office department during the fiscal year ending the thirtieth of June, eighteen hundred and fifty-eight.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums be, and the same are hereby, appropriated for the Post-Office department for the year ending the thirtieth of June, eighteen hundred and fifty-eight, out of any moneys in the treasury arising from the revenues of the said department, in conformity to the act of the second of July, eighteen hundred and thirty-six :—

* * * * *

SEC. 10. *And be it further enacted*, That the Postmaster-General be, and he is hereby, authorized to contract for the conveyance of the entire letter mail from such point on the Mississippi River, as the contractors may select, to San Francisco, in the State of California, for six years, at a cost not exceeding three hundred thousand dollars per annum for semi-monthly, four hundred and fifty thousand dollars for weekly, or six hundred thousand dollars for semi-weekly service; to be performed semi-monthly, weekly, or semi-weekly, at the option of the Postmaster-General.

SEC. 11. *And be it further enacted*, That the contract shall require the service to be performed with good four-horse coaches, or spring wagons, suitable for the conveyance of passengers, as well as the safety and security of the mails.

SEC. 12. *And be it further enacted*, That the contractors shall have the right of pre-emption to three hundred and twenty acres of any land not then disposed of or reserved, at each point necessary for a station, not to be nearer than ten miles from each other; and provided that no mineral land shall be thus pre-empted.

* * * * *

Approved, March 3, 1857.

No. 312.—An Act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands in alternate sections to the State of Alabama, to aid in the construction of a certain railroad in said State.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be and is hereby

granted to the Territory of Minnesota, for the purpose of aiding in the construction of railroads, from Stillwater, by way of Saint Paul and Saint Anthony, to a point between the foot of Big Stone Lake and the mouth of Sioux Wood River, with a branch via Saint Cloud and Crow Wing, to the navigable waters of the Red River of the north, at such point as the Legislature of said Territory may determine; from St. Paul and from Saint Anthony, via Minneapolis, to a convenient point of junction west of the Mississippi, to the southern boundary of the Territory in the direction of the mouth of the Big Sioux River, with a branch, via Faribault, to the north line of the State of Iowa, west of range sixteen; from Winona, via Saint Peters, to a point on the Big Sioux River, south of the forty-fifth parallel of north latitude; also from La Crescent, via Target Lake, up the valley of Root River, to a point of junction with the last mentioned road, east of range seventeen, every alternate section of land, designated by odd numbers, for six sections in width on each side of each of said roads and branches; but in case it shall appear that the United States have, when the lines or routes of said roads and branches are definitely fixed, sold any sections, or any parts thereof, granted as aforesaid, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent, or agents, to be appointed by the Governor of said Territory or future State to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tiers of sections above specified, so much land, in alternate sections, or parts of sections, as shall be equal to such lands as the United States have sold, or otherwise appropriated, or to which the rights of pre-emption have attached, as aforesaid; which lands (thus selected in lieu of those sold, and to which pre-emption rights have attached as aforesaid, together with the sections and parts of sections designated by odd numbers as aforesaid, and appropriated as aforesaid) shall be held by the Territory or future State of Minnesota for the use and purpose aforesaid: *Provided*, That the land to be so located shall, in no case, be further than fifteen miles from the lines of said roads or branches, and selected for and on account of each of said roads or branches: *Provided, further*, That the lands hereby granted for and on account of said roads and branches, severally, shall be exclusively applied in the construction of that road for and on account of which such lands are hereby granted, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatsoever: *And provided, further*, That any and all lands heretofore reserved to the United States, by any act of Congress, or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement, or for any other purpose whatsoever, be, and the same are hereby reserved to the United States from the operation of this act, except so far as it may be found necessary to locate the routes of said railroads and branches through such reserved lands, in which case the right of way only shall be granted, subject to the approval of the President of the United States.

SEC. 2. *And be it further enacted*, That the sections and parts of sections of land which by such grant shall remain to the United States, within six miles on each side of said roads and branches, shall not be sold for less than double the minimum price of the public lands when sold; nor shall any of said lands become subject to private entry until the same shall have been first offered at public sale at the increased price.

SEC. 3. *And be it further enacted*, That the said lands hereby granted to the said Territory or future State shall be subject to the future disposal of the Legislature thereof for the purposes herein expressed and no other; and the said railroads and branches shall be and remain public highways

for the use of the Government of the United States, free from toll or other charge upon the transportation of any property or troops of the United States.

SEC. 4. *And be it further enacted*, That the lands hereby granted to said Territory or future State shall be disposed of by said Territory or future State only in the manner following, that is to say: That a quantity of land not exceeding one hundred and twenty sections for each of said roads and branches, and included within a continuous length of twenty miles of each of said roads and branches, may be sold; and when the Governor of said Territory or future State shall certify to the Secretary of the Interior that any twenty continuous miles of any of said roads or branches is completed, then another quantity of land hereby granted, not to exceed one hundred and twenty sections for each of said roads and branches having twenty continuous miles completed as aforesaid, and included within a continuous length of twenty miles of each of such roads or branches, may be sold; and so from time to time until said roads and branches are completed; and if any of said roads or branches is not completed within ten years no further sale shall be made, and the lands unsold shall revert to the United States.

SEC. 5. *And be it further enacted*, That the United States Mail shall be transported over said roads and branches, under the direction of the Post-Office Department, at such price as Congress may by law direct: *Provided*, That until such price is fixed by law, the Postmaster-General shall have the power to determine the same.

SEC. 6. *And be it further enacted*, That in case any lands on the line of said roads or branches are within any Indian territory no title to the same shall accrue, nor shall the same be entered upon by the authority of said Territory or State until the Indian title to the same shall have been extinguished.

SEC. 7. *And be it further enacted*, That there be and is hereby granted to the State of Alabama, for the purpose of aiding in the construction of a railroad "from the line of Georgia, on the Chattahoochee River, to the city of Mobile, Alabama," "through the counties of Henry, Dale, Coffee, Covington, Conecuh, Baldwin and Mobile," and a branch railroad "from Eufaula to Montgomery," "through the counties of Barbour, Pike, Macon and Montgomery," chartered by the State of Alabama by an act entitled "An act to authorize the Savannah and Albany Railroad Company to extend their railroad from the line of Georgia, on the Chattahoochee River, to the city of Mobile, Alabama, and to extend a branch road from Eufaula to Montgomery," approved December twentieth, eighteen hundred and fifty-three, alternate sections of the public lands to the same extent and in the same manner, and upon the same limitations and restrictions in every respect, as was granted to aid in the construction of other railroads under an act of Congress entitled "An act granting public lands in alternate sections to the State of Alabama to aid in the construction of certain railroads in said State," approved June three, eighteen hundred and fifty-six.

Approved, March 3, 1857.

NO. 313.—An Act to amend "An act granting public lands in alternate sections to the State of Alabama to aid in the construction of certain railroads in said State."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the sixth section of an act,

granting public lands in alternate sections to the State of Alabama, to aid in the construction of certain railroads in said State, approved second day of June, eighteen hundred and fifty-six, be and the same is hereby so amended, that in lieu of the words "Central Railroad from Montgomery to some point on the Alabama and Tennessee State line in the direction to Nashville, Tennessee," the words "Tennessee and Alabama Central Railroad" be and they are hereby substituted.*

Approved, March 3, 1857.

No. 314.—An Act to settle certain accounts between the United States and the State of Mississippi, and other States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Commissioner of the General Land-Office be and he is hereby required to state an account between the United States and the State of Mississippi, for the purpose of ascertaining what sum or sums of money are due to said State, heretofore unsettled, on account of the public lands in said State, and upon the same principles of allowance and settlement as prescribed in the "Act to settle certain accounts between the United States and the State of Alabama,"† approved the second March, eighteen hundred and fifty-five; and that he be required to include in said account the several reservations under the various treaties with the Chickasaw and Choctaw Indians within the limits of Mississippi, and allow and pay to the said State five per centum thereon, as in case of other sales, estimating the lands at the value of one dollar and twenty-five cents per acre.

SEC. 2. *And be it further enacted,* That the said commissioner shall also state an account between the United States and each of the other States upon the same principles, and shall allow and pay to each State such amount as shall thus be found due, estimating all lands and permanent reservations at one dollar and twenty-five cents per acre.

Approved, March 3, 1857.

No. 315.—An Act making appropriations for the support of the army for the year ending the thirtieth June, eighteen hundred and fifty-eight.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums be and the same are hereby appropriated, out of any money in the treasury not otherwise appropriated, for the support of the army for the year ending the thirtieth of June, eighteen hundred and fifty-eight.

* * * * *

SEC. 4. *And be it further enacted,* That the provisions of the act approved March third, eighteen hundred and nineteen, entitled "An act authorizing the sale of certain military sites,"‡ be and they are hereby extended to

* See No. 290.

† See No. 272.

‡ Said act reads as follows:—CHAP. 88. An Act authorizing the sale of certain mili-

all military sites, or to such parts thereof which are or may become useless for military purposes: *Provided nevertheless*, That nothing in this act, nor in the act above mentioned, shall be so construed as to impair in any wise the right of the State within which any such site or reservation may be situated to impose taxes on the same, in like manner as upon other lands or property owned by individuals within the State after such sale.*

* * * * *
Approved, March 3, 1857.

No. 316.—An Act making appropriations for the legislative, executive, and judicial expenses of government for the year ending the thirtieth of June, eighteen hundred and fifty-eight.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums be and the same are hereby appropriated, out of any money in the treasury not otherwise appropriated, for the objects hereafter expressed, for the fiscal year ending the thirtieth of June, eighteen hundred and fifty-eight, namely :

* * * * *
Surveyors-General and their Clerks.—For compensation of the surveyor-general northwest of the Ohio, and the clerks in his office, eight thousand three hundred dollars.

And it is hereby made the duty of the Secretary of the Interior, as soon after the passage of this act as may be, to cause the said office to be removed to the city of Saint Paul, in the Territory of Minnesota, and to make the necessary provisions for immediate and effective operations. And when so removed, the duties of said surveyor-general shall be co-extensive with the limits of the future State of Minnesota, as prescribed in the act entitled “An act to authorize the people of the Territory of Minnesota to form a constitution and State government preparatory to their admission into the Union, on an equal footing with the original States,” approved February twenty-sixth, eighteen hundred and fifty-seven.

* * * * *
Approved, March 3, 1857.

tary sites. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Secretary of War be, and he is hereby, authorized, under the direction of the President of the United States, to cause to be sold such military sites, belonging to the United States, as may have been found or become useless for military purposes. And the Secretary of War is hereby authorized, on the payment of the consideration agreed for, into the treasury of the United States, to make, execute, and deliver, all needful instruments, conveying and transferring the same in fee; and the jurisdiction, which had been specially ceded, for military purposes, to the United States, by a State, over such site or sites, shall thereafter cease. *Approved, March 3, 1819.*

* See Nos. 301, 344.

No. 317.—An Act for the relief of certain actual settlers and cultivators who purchased lands subject to graduation, within the limits of the Choctaw cession of eighteen hundred and thirty, at a less rate than the true graduated price, under the "Act to graduate and reduce the price of the public lands to actual settlers and cultivators," approved the fourth of August, eighteen hundred and fifty-four, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person or persons who may have entered, in good faith, lands subject to graduation within the limits of the Choctaw cession of eighteen hundred and thirty, before the correct graduation lists had been received at the local land-offices, at a less rate than the true graduation price, and who settled upon and improved the lands entered, or who entered the same for the benefit of an adjoining farm, and who continue to occupy the same, shall be entitled (provided the entries are regular in all other respects) to receive patents for the lands so entered, settled upon, and occupied, without any additional payment being required of them, upon their making the proof required by the circulars from the General Land-Office, dated the twenty-third of January and the seventh of April, eighteen hundred and fifty-six, any law to the contrary notwithstanding: *Provided*, That no proof shall be required which is not necessary to carry into effect the provisions of this act.*

SEC. 2. *And be it further enacted*, That the act of May nineteen, one thousand eight hundred and fifty-two, entitled "An act to authorize the legislature of the State of Mississippi to sell the lands heretofore appropriated for the use of schools in that State, and to ratify and approve the sales already made," be so construed as to apply to lands heretofore reserved for school purposes in the State of Mississippi.†

Approved, March 3, 1857.

No. 318.—An Act to extend the provisions of the act entitled "An act in addition to certain acts granting bounty land to certain officers and soldiers who have been engaged in the military services of the United States, to the officers and soldiers of Major David Bailey's battalion of Cook county (Illinois) Volunteers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all those officers and soldiers of Major David Bailey's battalion of Cook county (Illinois) volunteers stationed at Fort Dearborn, in the Black Hawk war of eighteen hundred and thirty-two, who have never received warrants for bounty land for services in said war, shall be entitled to receive a certificate or warrant from the Department of the Interior for one hundred and sixty acres of land, upon making proof either by record evidence or such parol evidence as the commissioner of pensions may require of having served in said war for the term of at least fourteen days; the provisions of this act to extend to the widows and minor children of said officers and soldiers who have died or may die before receiving such warrant or certificate.

Approved, March 3, 1857.

* See No. 251.

† See No. 192.

No. 319.—An Act to confirm to the several States the swamp and overflowed lands selected under the act of September twenty-eight, eighteen hundred and fifty, and the act of the second March, eighteen hundred and forty-nine.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the selection of swamp and overflowed lands granted to the several States by the act of Congress, approved September twenty-eight, eighteen hundred and fifty, entitled "An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits,"* and the act of the second of March, eighteen hundred and forty-nine, entitled "An act to aid the State of Louisiana in draining the swamp lands therein," heretofore made and reported to the Commissioner of the General Land-Office, so far as the same shall remain vacant and unappropriated, and not interfered with by an actual settlement under any existing law of the United States, be and the same are hereby confirmed, and shall be approved and patented to the said several States, in conformity with the provisions of the act aforesaid, as soon as may be practicable after the passage of this law: *Provided however,* That nothing in this act contained shall interfere with the provisions of the act of Congress entitled "An act for the relief of purchasers and locators of swamp and overflowed lands," approved March the second, eighteen hundred and fifty-five, which shall be and is hereby continued in force, and extended to all entries and locations of lands claimed as swamp lands made since its passage.†

Approved, March 3, 1857.

No. 320.—A Resolution relative to sections sixteen and thirty-six, in the Territories of Minnesota, Kansas, and Nebraska.

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, That where any settlements, by the erection of a dwelling-house, or the cultivation of any portion of the land, shall have been or shall be made upon the sixteenth or thirty-sixth sections (which sections have been reserved by law for the purpose of being applied to the support of schools in the Territories of Minnesota, Kansas, and Nebraska, and in the States and Territories hereafter to be erected out of the same) before the said sections shall have been or shall be surveyed; or when such sections have been or may be selected or occupied as town sites, under and by virtue of the act of Congress approved twenty-third of May, eighteen hundred and forty-four,‡ or reserved for public uses before the survey, then other lands shall be selected by the proper authorities, in lieu thereof, agreeably to the provisions of the act of Congress approved twentieth May, eighteen hundred and twenty-six, entitled "An act to appropriate lands for the support of schools in certain townships and fractional townships not before provided for."§ And if such settler can bring himself or herself, within the provisions of the act of fourth of September, eighteen hundred and forty-one,|| or the occupants of the town site be enabled to show a compliance with the provisions of the law of twenty-third of May, eighteen

* See No. 166, 182.

† See No. 79.

|| See No. 48.

‡ See No. 275.

§ See No. 18.

hundred and forty-four, then the right of preference granted by the said acts, in the purchase of such portion of the sixteenth or thirty-sixth sections, so settled and occupied, shall be in them respectively, as if such sections had not been previously reserved for school purposes.

Approved, March 3, 1857.

No. 321.—A Resolution concerning Wolf Island.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the United States hereby disclaims all title to any and all lands on "Wolf Island" in the Mississippi River: *Provided,* That nothing herein contained shall be construed as in any manner affecting the question of jurisdiction over said Island as between the States of Kentucky and Missouri.

Approved March 3, 1857.

No. 322.—A Resolution to return to the land-office at Vincennes, Indiana, certain deeds transmitted to the general land-office by the board of commissioners appointed under the "Act to ascertain and adjust the titles to certain lands in the State of Indiana," approved July twenty-seventh, one thousand eight hundred and fifty-four.*

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That in all cases where the deed and evidences of titles have been transmitted to the Commissioner of the General Land-Office under the "Act to ascertain and adjust the titles to certain lands in the State of Indiana," approved July twenty-seventh, one thousand eight hundred and fifty-four, as is provided for in section six of said act, that such deeds and evidences of titles in all cases where there has been an action on the same, whether confirmed or rejected by the Board of Commissioners constituted under said act, shall be returned by the Commissioner of the General Land-Office to the original claimants.

Approved, March 3, 1857.

No. 323.—An Act to create additional land districts in the State of California and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States be and he is hereby authorized to establish additional land districts, in his discretion, not exceeding three, in the State of California, and to fix, from time to time, the boundaries thereof, as the public interest may require; which districts shall, respectively, be named after the places at which the offices shall first be established; and the President shall be au-

* See Nos. 246, 265.

thorized hereafter, from time to time, as circumstances may require, to adjust the boundaries of any and all of the land districts in said State, and remove the offices when the same shall be expedient.

SEC. 2. *And be it further enacted*, That the President is hereby authorized to appoint, by and with the advice and consent of the Senate, or during the recess thereof and until the end of the next ensuing session, a register and a receiver for each of said additional districts, who shall, respectively, be required to reside at the site of the offices, shall be subject to the same laws and responsibilities, and whose compensation shall be the same as is now prescribed by law for other land offices in that State.

Approved, March 29, 1858.

No. 324.—An Act amendatory of an act entitled “An act to establish two additional land districts in the Territory of Minnesota,” approved July eighth, eighteen hundred and fifty-six.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of an act entitled “An act to establish two additional land districts in the Territory of Minnesota,” approved July eighth, anno Domini eighteen hundred and fifty-six, as defines the southern boundary of the northwestern land district, on the west side of the Mississippi River, be, and the same is hereby, repealed, and in lieu thereof the following boundaries are established, to wit: Commencing at the point on the eastern side of the Mississippi river where the present south line touches the river; thence down said River to the point opposite the intersection with the river of the eighth standard parallel; thence along said parallel to the point of intersection of guide meridian number four; thence along said guide meridian to the seventh standard parallel; thence west along said seventh parallel to the Sioux Wood river; thence north to the line heretofore established.

SEC. 2. *And be it further enacted*, That the line dividing ranges twenty-three and twenty-four be the boundary line between the northwestern and northeastern land districts in lieu of the range line between eighteen and nineteen, as heretofore established in the above-recited act.

Approved, May 11, 1858.

No. 325.—An Act to enlarge the Detroit and Saginaw land districts in Michigan.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all that part of the present Cheboygan district, in the State of Michigan, which lies south of the line dividing townships twenty-eight and twenty-nine north, and east of the line dividing ranges two and three west, shall be attached to and form a part of the present Saginaw district, and all that part of the said Cheboygan district which lies north of the line dividing townships twenty-eight and twenty-nine north, and east of the line dividing ranges one and two

* See No. 297.

west, including the island of Mackinac, be attached to and form a part of the Detroit district, in said State.

SEC. 2. *And be it further enacted*, That this act take effect from and after the first day of July next.

Approved, May 11, 1858.

No. 326.—An Act to amend the act entitled “An act to ascertain and settle the private land claims in the State of California,” passed March third, eighteen hundred and fifty-one.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in cases pending in the district courts of the United States in California, on appeal from the decree of the commissioners to ascertain and settle the private land claims in the State of California, under the act of Congress passed March third, eighteen hundred and fifty-one, if either party shall desire to examine any witness residing in any other district within said State, or shall require the production of any paper, written instrument, book, or document, supposed to be in the possession or power of a witness residing in another district, the court wherein the case is pending, or any judge thereof, being satisfied, by affidavit or otherwise, of the materiality of such witness, or of the production of such paper, written instrument, book, or document, as evidence of the case, may order the clerk of said court to issue a *subpœna*, or a *subpœna duces tecum* for such witness and for such paper, written instrument, book, or document; which *subpœna* or *subpœna duces tecum* shall run into any other district in said State, and be served by the marshal of either district, as the court or judge may direct: And the court or judge ordering said writ shall have power to enforce obedience to said process, and punish disobedience by attachment, and in like manner as if said witness resided within the district where the cause may be pending; and all attachments and process necessary to enforce obedience or punish disobedience to the aforesaid writs of *subpœna* and *subpœna duces tecum* may be served and executed by the marshal of either district, as the court or judge may direct: *Provided*, That a witness attending the court under a *subpœna* issued under the provisions of this act, in a district in which he does not reside, shall be entitled to the same fees for attendance as are allowed by the laws of the State of California to witnesses in similar cases.

Approved, May 11, 1858.

No. 327.—An Act for the relief of the Hungarian settlers upon certain tracts of land in Iowa, hitherto reserved from sale by order of the President, dated January twenty-two, eighteen hundred and fifty-five.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the right of pre-emption be, and the same hereby is, extended to all Hungarian settlers on that body of land reserved from sale or location by order of the President of the

* See No. 189.

United States, dated January twenty-second, eighteen hundred and fifty-five, said lands being known and described as follows : northeast quarter of northwest quarter of section ten, township sixty-seven, range twenty-six ; east half of southeast quarter of section eleven, township sixty-seven, range twenty-six ; east half of northeast quarter of section fourteen, township sixty-seven, range twenty-six ; southwest quarter of southeast quarter of section fourteen, township sixty-seven, range twenty-six ; east half of northeast quarter of section twenty-two, township sixty-seven, range twenty-six ; southeast quarter of northeast quarter of section twenty-three, township sixty-seven, range twenty-six ; west half of northeast quarter of section twenty-three, township sixty-seven, range twenty-six ; west half of northwest quarter of section twenty-three, township sixty-seven, range twenty-six ; north half of northeast quarter of section five, township sixty-eight, range twenty-six ; east half of northwest quarter of section five, township sixty-eight, range twenty-six ; east half of northeast quarter of section six, township sixty-nine, range twenty-six ; northeast quarter of northwest quarter of section six, township sixty-nine, range twenty-six ; southwest quarter of northwest quarter of section six, township sixty-nine, range twenty-six ; southeast quarter of section six, township sixty-nine, range twenty-six ; west half of southwest quarter of section six, township sixty-nine, range twenty-six ; northeast quarter of section seven, township sixty-nine, range twenty-six ; northwest quarter of section seven, township sixty-nine, range twenty-six ; southwest quarter of southeast quarter of section thirty-two, township sixty-nine, range twenty-six ; northeast quarter of section one, township sixty-eight, range twenty-seven ; northwest quarter of section one, township sixty-eight, range twenty-seven ; northeast quarter of section two, township sixty-eight, range twenty-seven ; northwest quarter of northeast quarter of section one, township sixty-nine, range twenty-seven ; northeast quarter of southeast quarter of section one, township sixty-nine, range twenty-seven ; northeast quarter of northeast quarter of section twelve, township sixty-nine, range twenty-seven ; northeast quarter of northeast quarter of section thirty-six, township seventy, range twenty-seven ; west half of northeast quarter of section thirty-six, township seventy, range twenty-seven ; northwest quarter of section thirty-six, township seventy, range twenty-seven ; west half of southeast quarter of section thirty-six, township seventy, range twenty-seven ; north half of southwest quarter of section thirty-six, township seventy, range twenty-seven.

SEC. 2. *And be it further enacted*, That all such Hungarians entitled to the right of pre-emption to the above-described lands by this act, who may have gone on to said lands prior to January twenty-second, eighteen hundred and fifty-five, or since that time, and have continued to inhabit and improve the same, shall hold their claims, not exceeding one hundred and sixty acres to each pre-emptor, against any other subsequent claimants whatever : *Provided further*, That said claimants under settlement and cultivation made prior to January twenty-second, eighteen hundred and fifty-five, or prior to the passage of this act, shall make known their claims in writing to the Register at Chariton within three months from the date of publication in said district, of notice to said claimants, of the privileges granted hereby, to be given by the Commissioner of the General Land-Office ; and in all cases proof and payment must be made at the land-office aforesaid, within twelve months from the date of publication of notice aforesaid.

Approved, May 11, 1858.

No. 328.—An Act to provide for the collection and safe-keeping of public archives in the State of California.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be the duty of the Secretary of the Interior to cause to be collected and deposited in the Surveyor General's office in California, all official books, papers, instruments of writing, documents, archives, official seals, stamps, or dies, that may be found in the unauthorized possession of any individual, relating to and used in the administration of government and public affairs in the department of Upper California, and which belonged to the government during the existence of Spanish or Mexican authority in Upper California; and the same, when deposited in his office, shall be safely and securely kept by the Surveyor-General in the archives of his office; and copies thereof, authenticated by the Surveyor-General under the seal of his office, shall be evidence in all cases where the originals would be evidence; *Provided,* That at the time of depositing said books, papers, writings, and documents in said archives, a schedule and accurate description thereof shall be made by the Surveyor-General, with a statement of the time and place where the same were found, and when they were deposited in the archives, which shall be certified under the seal of the Surveyor-General, and filed in his office; and a certified copy of said schedule shall be transmitted to the Commissioner of the General Land-Office, and also to the Attorney-General.

SEC 2. *And be it further enacted,* That if the Surveyor-General shall have cause to suspect a concealment of any such official books, papers, writings, documents, archives, or official seals, stamps, or dies aforesaid, in any particular dwelling-house, building, or place, any judge or commissioner of the United States may, on affidavit showing the facts and circumstances, upon which such suspicions are founded, grant to the Surveyor-General, or to any marshal of the United States, a warrant to enter such house, building, or place, and there to search for such official books, papers, writings, documents, archives, seals, stamps, or dies, and to take possession thereof and deposit them in the archives of the Surveyor-General's office as aforesaid.

SEC. 3. *And be it further enacted,* That if any person shall without lawful authority, wilfully take from the archives of the said Surveyor-General's office any expediente, map, diseño, book, paper, writing, record, document, seal, stamp, or die; or shall wilfully alter, deface, mutilate, injure, or destroy any expediente, book, paper, map, diseño, instrument of writing, document, record, seal, stamp or die, deposited in said archives; or shall conceal or unlawfully withhold from the possession of the Surveyor-General, or on demand refuse to deliver to him any expediente, map, diseño, official book, paper, writing, document, archive, record, seal, stamp or die, relating to or used in the administration of government in the department of Upper California, and belonging to the government during the existence of Spanish or Mexican authority in said department; or shall wilfully alter, deface, mutilate, make away with or destroy any such official book, expediente, map, diseño, paper, writing, document, archive, record, seal, stamp or die, the person so offending shall be deemed guilty of a misdemeanor, and on conviction thereof in any court of competent jurisdiction, shall forfeit and pay a fine, not exceeding ten thousand dollars, at the discretion of the court, and be imprisoned for a term not exceeding ten years, at the like discretion.

SEC. 4. *And be it further enacted,* That if any person shall wilfully,

secretly, and fraudulently place or cause to be placed in or among the archives of the Surveyor-General's office, any espediente, book, paper, diseño, map, draught, record, or any instrument of writing purporting to be a petition, decree, order, report, concession, grant, confirmation, map, diseño, espediente, or part of an espediente, denouncement, title-paper, or evidence of right, title, or claim to any land, mine, or mineral, or any book, writing, paper, or document whatever, the person so offending shall be deemed and adjudged guilty of a misdemeanor, and upon conviction thereof by any court of competent jurisdiction, shall forfeit and pay a fine not exceeding five thousand dollars, and be imprisoned for a term not exceeding three years; or be both fined and imprisoned within said limits, at the discretion of the court.

Approved, May 18, 1858.

No. 329.—An Act for the prevention and punishment of frauds in land titles in California.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That if any person shall falsely make, alter, forge, or counterfeit, or cause or procure to be falsely made, altered, forged, or counterfeited; or willingly aid and assist in the false making, altering, forging, or counterfeiting any petition, certificate, order, report, decree, concession, denouncement, deed, patent, confirmation, diseño, map, espediente, or part of an espediente, or any title-paper, or evidence of right, title, or claim to lands, mines, or minerals in California, or any instrument of writing whatever in relation to lands or mines or minerals in the State of California; for the purpose of setting up or establishing against the United States any claim, right, or title to lands, mines, or minerals within the State of California, or for the purpose of enabling any person to set up or establish any such claim; or if any person, for the purposes aforesaid, or either of them, shall utter or publish as true and genuine, any such false, forged, altered, or counterfeited petition, certificate, order, report, decree, concession, denouncement, deed, patent, confirmation, diseño, map, espediente or part of an espediente, title, paper, evidence of right, title, or claim to lands or mines or minerals in the State of California, or any instrument of writing whatever in relation to lands, or mines or minerals in the State of California, the person so offending shall be deemed and adjudged guilty of a misdemeanor: and, being thereof duly convicted, shall be sentenced to be imprisoned and kept at hard labor for a period not less than three years, and not more than ten years, and shall be fined not exceeding ten thousand dollars.

SEC. 2. *And be it further enacted,* That if any person shall make, or cause or procure to be made, or shall willingly aid and assist in making any falsely dated petition, certificate, order, report, decree, concession, denouncement, deed, patent, confirmation, diseño, map, espediente or part of an espediente, or any title-paper, or written evidence of right, title, or claim, under Mexican authority, to any lands, mines or minerals in the State of California, or any instrument of writing in relation to lands or mines or minerals in the State of California, having a false date, or falsely purporting to be made by any Mexican officer or authority prior to the seventh day of July, A. D. eighteen hundred and forty-six, for the purpose of setting up or establishing any claim against the United States to lands,

or mines or minerals within the State of California, or of enabling any person to set up or establish any such claim; or if any person shall sign his name as governor, secretary, or other public officer acting under Mexican authority, to any instrument of writing falsely purporting to be a grant, concession, or denouncement under Mexican authority, and during its existence in California, of lands, mines, or minerals, or falsely purporting to be an informe, report, record, confirmation, or other proceeding on an application for a grant, concession, or denouncement under Mexican authority, during its existence in California, of lands, mines or minerals, the person so offending shall be deemed and adjudged guilty of a misdemeanor; and, being thereof duly convicted, shall be sentenced to be imprisoned and kept at hard labor for a period not less than three years, nor more than ten years, and shall be fined not exceeding ten thousand dollars,

SEC. 3. *And be it further enacted*, That if any person, for the purpose of setting up or establishing any claim against the United States to lands, mines, or minerals within the State of California, shall present, or cause or procure to be presented, before any court, judge, commission, or commissioner, or other officer of the United States, any false, forged, altered, or counterfeited petition, certificate, order, report, decree, concession, denouncement, deed, patent, diseño, map, espediente or part of an espediente, title-paper, or written evidence of right, title, or claim to lands, minerals or mines in the State of California, knowing the same to be false, forged, altered, or counterfeited, or any falsely dated petition, certificate, order, report, decree, concession, denouncement, deed, patent, confirmation, diseño, map, espediente or part of an espediente, title-paper, or written evidence of right, title, or claim to lands, mines, or minerals in California, knowing the same to be falsely dated; or if any person shall prosecute in any court of the United States, by appeal or otherwise, any claim against the United States for lands, mines, or minerals in California, or shall, after the passage of this act, continue to prosecute any claim now pending in said courts against the United States for lands, mines or minerals in California, which claim is founded upon, or evidenced by, any petition, certificate, order, report, decree, concession, denouncement, deed, patent, confirmation, diseño, map, espediente or part of an espediente, title-paper, or written evidence of right, title, or claim, which has been forged, altered, counterfeited, or falsely dated, knowing the same to be forged, altered, or counterfeited, or falsely dated, the person so offending shall be deemed and adjudged guilty of a misdemeanor; and, on conviction thereof, shall be sentenced to be imprisoned and kept at hard labor for a period not less than three years, nor more than ten years, and shall be fined not exceeding ten thousand dollars.

Approved, May 18, 1858.

NO. 330.—An Act to amend an act entitled "An act to authorize the President of the United States to cause to be surveyed the tract of land, in the Territory of Minnesota, belonging to the half-breeds or mixed bloods of the Dacotah or Sioux nation of Indians, and for other purposes," approved seventeenth July, eighteen hundred and fifty-four.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act approved seven-

teenth July, eighteen hundred and fifty-four, above referred to, chapter eighty-three,* be, and the same is hereby, amended, so that the body of land known as the half-breed tract, lying on the west side of Lake Pepin, and the Mississippi River, in the Territory of Minnesota, and which is authorized to be surveyed by the said act of eighteen hundred and fifty-four, shall be subject to the operation of the laws regulating the sale and disposition of the public lands; and settlements heretofore made thereon are declared valid so far as they do not conflict with settlements made by half-breeds, and that the settlers shall have the benefit of the pre-emption laws of the United States, any location of half-breed scrip thereon, after the date of the settlement, notwithstanding: *Provided*, The declaration of pre-emption be filed within three months after public notice is given of the passage of this act in the proper land district: *And provided*, That when two or more persons have settled on the same quarter section, prior to the passage of this act, they shall be permitted to enter the same, and the rights of each shall be determined according to the provisions of the act relating to pre-emptions, passed March third, eighteen hundred and forty-three.†

SEC. 2. *And be it further enacted*, That the provisions of this act shall not extend to any tract or subdivision, within the body of land aforesaid, which shall have been settled upon in good faith by, and is in the occupancy of, any of the said half-breeds or mixed-bloods; which lands, so settled upon and occupied by the half-breeds, are hereby expressly declared to be subject to no other disposition than location by the "certificates" or "scrip" authorized to be issued by the said act of eighteen hundred and fifty-four, for the benefit of said Indians. Nor shall the provisions of this act extend to any lands which may have been located prior to its passage with half-breed scrip, with the consent of the settlers thereon.

Approved, May 19, 1858.

No. 331.—An Act to create a land district in the Territory of New Mexico.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the public lands in the Territory of New Mexico, to which the Indian title shall have been extinguished, shall constitute a land district to be called the "District of New Mexico," the office for which shall be established at such place within said district as the President of the United States may from time to time direct.

SEC. 2. *And be it further enacted*, That, for the purpose of carrying this act into effect, the President shall be, and he is hereby, authorized to appoint, by and with the advice and consent of the Senate, or during the recess thereof, a register and receiver for the district hereby created, who shall be required to reside at the site of the office, and whose powers, duties, obligations, and responsibilities shall be the same as are now prescribed by law for other land officers, (so far as they apply to these officers.)

SEC. 3. *And be it further enacted*, That this act shall not take effect in less than six months after its passage.

Approved, May 24, 1858.

*See No. 243.

† See No. 72.

No. 332.—An Act for the relief of Isaac Drew and other settlers upon the public lands in the State of Wisconsin.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Isaac Drew, and such other persons as may have settled, in good faith, in the State of Wisconsin, since the first day of July, eighteen hundred and fifty, upon any portion of the lands that were erroneously selected by said State as a part of the five hundred thousand acre grant, which selections were not confirmed, and who were at that date, or since that time have become, an actual settler and housekeeper, and made improvements on any tract embraced among said erroneous selections, are hereby entitled to the same right of pre-emption, and upon the same terms and conditions, as are prescribed by an act entitled, "An Act to appropriate the Proceeds of the Sales of the Public Lands and grant Pre-emption Rights," approved September *fourteenth*, [fourth,] eighteen hundred and forty-one:* *Provided*, such lands shall be paid for by such settlers at the minimum price.

SEC. 2. *And be it further enacted*, That where persons have erroneously entered any of the lands named in the first section of this act, and shall satisfactorily show to the register and receiver that, prior to, or within three months after, the passage of this act, they have made an actual settlement on the lands mentioned in the first section, the Commissioner of the General Land-Office is hereby authorized to issue patents therefor: *Provided*, That it shall be satisfactorily made to appear to him that the entry of the tract or tracts sought to be patented does not interfere with the rights or occupancy of any actual settler.

Approved, May 24, 1858.

No. 333.—An Act for extending the land laws east of the Cascade Mountains, in Oregon and Washington Territories.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the existing laws relating to the survey and disposal of the public lands in the Territories of Oregon and Washington, west of the Cascade Mountains, be, and the same are hereby, extended and made applicable also to the lands lying east of said mountains within said Territories.

Approved, May 29, 1858.

No. 334.—An Act to provide for the location of certain confirmed private land claims in the State of Missouri, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the decisions in favor of certain land claimants herein made by the recorder of land titles in the State of Missouri and the two commissioners associated with him, by virtue

* See No. 48.

of an act entitled "An Act for the final adjustment of Private Land Claims in Missouri," approved July nine, eighteen hundred and thirty-two, and an act supplemental thereto, approved second March, eighteen hundred and thirty-three,* as entered in the transcript of decisions transmitted by the said recorder and commissioners to the Commissioner of the General Land-Office, which said claims are named and numbered as follows: Manuel de Liza, number thirty-three; John Coontz and Hempstead, number forty-four; Matthew Saucier, number fifty-seven; Charles Tayon, number sixty-seven; the sons of Joseph M. Pepin, number seventy-four; Louis Lorimier, number eighty-seven; Bartholomew Cousin, number eighty-nine; Manuel Gonzales Moro, number ninety-five; Seneca Rawlins, number one hundred and four; William L. Long, number one hundred and six; Joachim Liza, number one hundred and thirty-three; Francis Lacombe, number thirty-four; Israel Dodge, number three hundred and thirty-eight; Joseph Silvain, number two hundred and ninety-three; John P. Cabanis, number two hundred and ninety-eight; William Hartley, number three hundred and one; Andrew Chevalier, number two hundred and ninety-two; William Morrison, number three hundred and seven; Solomon Bellew, number three hundred and eight; Paschal Detchemendez, number three hundred and nine; Baptiste Amure, number three hundred and ten; Alexander Maurice, number three hundred and twenty-three; John Baptiste Vallee, number three hundred and thirty-four; said decisions above named being in the first class of claims acted upon by said board; also the claim of Regis Loisel, number six, in the second class, acted on by said board, be, and the same are hereby, confirmed to the respective claimants or their legal representatives.

SEC. 2. *And be it further enacted*, That the decisions in favor of land claimants made by P. Grimes, Joshua Lewis, and Thomas B. Robertson, commissioners appointed to adjust private land claims in the eastern district of the Territory of Orleans, communicated to the House of Representatives by the Secretary of the Treasury, on the ninth day of January, one thousand eight hundred and twelve, and which *is* [are] found in the American State Papers, Public Lands, (Duff Green's edition,) volume two, from page two hundred and twenty-four to three hundred and sixty-seven inclusive, be, and the same are hereby, confirmed, saving and reserving, however, to all adverse claimants the right to assert the validity of their claims in a court or courts of justice: *Provided however*, That any claim so recommended for confirmation, but which may have been rejected, in whole or in part, by any subsequent board of commissioners, be, and the same is hereby, specially excepted from confirmation.†

SEC. 3. *And be it further enacted*, That the locations authorized by the preceding section shall be entered with the register of the proper land-office, who shall, on application for that purpose, make out for such claimant, or his legal representatives, (as the case may be,) a certificate of location, which shall be transmitted to the Commissioner of the General Land-Office; and if it shall appear to the satisfaction of the said commissioner that said certificate has been fairly obtained, according to the true intent and meaning of this act, then, and in that case, patents shall be issued for the land so located as in other cases; and for each and every certificate as aforesaid, issued by the register of any land-office, he shall receive the sum of one dollar; that in all cases of confirmation by this act, or where any private land claim has been confirmed by Congress, and the same, in whole or in part, has not been located or satisfied, either for want of a specific location

* See No. 360.

† See No. 360.

prior to such confirmation, or for any reason whatsoever, other than a discovery of fraud in such claim subsequent to such confirmation, it shall be the duty of the surveyor-general of the district in which such claim was situated, upon satisfactory proof that such claim has been so confirmed, and that the same, in whole or in part, remains unsatisfied, to issue to the claimant, or his legal representatives, a certificate of location for a quantity of land equal to that so confirmed and unsatisfied; which certificate may be located upon any of the public lands of the United States subject to sale at private entry, at a price not exceeding one dollar and twenty-five cents per acre: *Provided*, That such location shall conform to legal divisions and subdivisions.

SEC. 4. *And be it further enacted*, That the register of the proper land-office, upon the location of such certificate, shall issue to the person entitled thereto a certificate of entry, upon which, if it shall appear to the satisfaction of the Commissioner of the General Land-Office that such certificate has been fairly obtained, according to the true intent and meaning of this act, a patent shall issue as in other cases.

Approved, June 2, 1858.

No. 335.—An Act declaring the title to land warrants in certain cases.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That when proof has been, or shall hereafter be, filed in the Pension Office, during the lifetime of a claimant, establishing, to the satisfaction of that office, his or her right to a warrant for military services, and such warrant has not been, or may not hereafter be, issued until after the death of the claimant, and all such warrants as have been heretofore issued subsequent to the death of the claimant, the title to such warrants shall vest in the widow, if there be one, and if there be no widow, then in the heirs or legatees of the claimant; and all such warrants, and all other warrants issued pursuant to existing laws, shall be treated as personal chattels, and may be conveyed by assignment of such widow, heirs, or legatees, or by the legal representatives of the deceased claimant, for the use of such heirs or legatees only.*

SEC. 2. *And be it further enacted*, That the provisions of the first sections of the act approved March twenty-two, eighteen hundred and fifty-two, to make land warrants assignable, and for other purposes, shall be so extended as to embrace land warrants issued under the act of the third March, eighteen hundred and fifty-five.†

Approved, June 3, 1858.

†.

No. 336.—An Act confirming locations of land warrants under certain circumstances.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in all cases in which locations have been made with bounty-land warrants on lands which were sub-

* See No. 190.

† See No. 282.

ject to entry at private sale, but upon individual competition were put up to the highest bidder, and the excess paid for in cash, such locations shall be, and they are hereby, confirmed, if in all other respects regular, and authority is hereby given to issue patents accordingly: *Provided*, That such confirmation shall only extend to cases existing prior to the passage of this act.

Approved, June 3, 1858.

No. 337.—An Act making an appropriation for the payment of clerks employed in the offices of the registers of the land-offices at Oregon city and Winchester, in the territory of Oregon.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the sum of seven thousand dollars, or so much thereof as may be necessary, be, and the same is hereby, appropriated, out of any money in the treasury not otherwise appropriated, to enable the Secretary of the Interior to reimburse the registers of the land-offices at Oregon City and Winchester, in the Territory of Oregon, for expenses incurred by them in the employment of clerks actually required for the transaction of the business of their respective offices, growing out of an act entitled "An act to create the office of surveyor-general of the public lands in Oregon, and to provide for the survey and to make donations to settlers of the said public lands,"* approved September the twenty-seventh, one thousand eight hundred and fifty.

Approved, June 5, 1858.

No 338.—An Act to confirm the sale of the reservation held by the Christian Indians, and to provide a permanent home for said Indians.

Whereas, by the thirteenth article of a treaty made and concluded at Washington on the sixth day of May, one thousand eight hundred and fifty-four, between the United States of America and the Delaware Indians, a grant of four sections of land was made to the Christian Indians, for which a patent was to be issued to the said Indians, "subject to such restrictions as Congress may provide;" and whereas a patent was so issued to them on the twenty-first day of May, eighteen hundred and fifty-seven; and whereas it fully appears, by the evidence and papers on file before the Committee on Indian Affairs, that the four sections of land set apart by said treaty *was*, on the twenty-ninth day of May, eighteen hundred and fifty seven, sold and conveyed by said Christian Indians to one A. J. Isacks for the consideration of forty-three thousand four hundred dollars, which sum was a fair consideration for said lands: Therefore—

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That upon the payment of the said sum of forty-three thousand four hundred dollars by the said A. J. Isacks to the Secretary of the Interior, for the use and benefit of said Christian Indians, within ninety days from the passage of this act, it shall then be the duty of the President of the United States to confirm said sale.

* See No. 181.

SEC. 2. *And be it further enacted*, That the Secretary of the Interior be, and he hereby is, authorized and required to receive the proceeds of the sale of the said four sections of land, and apply the same as follows: that is to say, so much thereof as may be necessary to the purchase of a suitable tract of land for a permanent home for the Christian Indians, the erection of the necessary buildings for their accommodation, and the purchase of stock, agricultural implements, and whatever else may be necessary to establish them thereon; the balance of the said fund to be invested by the Secretary of the Interior in safe and profitable stocks, the interest whereof shall be applied to the support of a school among the said Christian Indians.

SEC. 3. *And be it further enacted*, That, whenever the Christian Indians desire it, the tract purchased under the provisions of the preceding section shall be divided among them, under the direction of the President of the United States, to be held in severalty and with all the rights incident to a fee-simple estate: *Provided*, That the said tracts, when so divided, shall be forever inalienable by the grantees or their heirs, except with the consent and approval of the President of the United States.

Approved, June 8, 1858.

No. 339.—An Act for the relief of certain settlers on the public lands in the State of Wisconsin.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of the even-numbered sections of land selected by the State of Wisconsin in the month of June, in the year eighteen hundred and forty-nine, to satisfy the quantity of land due said State under the act of Congress of August eighth, eighteen hundred and forty-six, granting land in aid of the improvement of the Fox and Wisconsin rivers, as *have* been sold, or contracted to be sold, by said State or its assigns, under the laws thereof, *are* hereby confirmed to said State, as parts of said grant, and the title of the purchasers declared to be valid as though the said selections had been made in conformity with law: *Provided*, That nothing contained in this act shall be construed to increase the quantity of land to which the State is entitled under the grant aforesaid: *And provided further*, That a schedule, duly *certify* [certified] by the governor, of the lands sold and contracted for to be sold, prior to the passage of this act, shall be filed in the General Land Office within six months from the date of this act.

SEC. 2. *And be it further enacted*, That every person being the head of a family, widow, or single man over the age of twenty-one years, who, on the eleventh day of June, in the year eighteen hundred and forty-nine, was, or since that time has become, an actual settler and housekeeper, and has made other improvements on any tract embraced in said even-numbered section selection, which the State of Wisconsin or its assigns *has* not sold or contracted to sell, is hereby entitled to the same right of pre-emption, and upon the same terms and conditions, as *is* prescribed by an act entitled "An act to appropriate the proceeds of the sales of the public lands and to grant pre-emption rights," approved September fourth, in the year eighteen hundred and forty-one: *Provided*, That this act shall not be construed to convey to Wisconsin any parts or portions of said even-num-

* See No. 120.

bered section selections which said State, or its assigns have not actually sold or contracted to sell, and the title to which is not confirmed by the first section of this act.*

Approved, June 9, 1858.

No. 340.—An Act for the relief of settlers on certain lands in the State of Illinois.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That every settler on any of the public lands heretofore selected by [the] State of Illinois, but which have not been confirmed to said State, under the provisions of the act of fourth September, eighteen hundred and forty-one, who settled thereon in good faith prior to the passage of this act, shall be entitled to pre-empt their respective claims by legal subdivisions, not to exceed one hundred and sixty acres in a compact body, at the ordinary minimum of one dollar and twenty-five cents per acre, unless within the six mile limits of any railroad grant, and in that case at the usual double minimum of two dollars and fifty cents per acre: *Provided,* Such settlers shall establish their rights according to the rules and regulations prescribed under the provisions of the act of fourth September, eighteen hundred and forty-one, and pay for the same within three months from the date of the publication of this act by the register of the proper district: *Provided,* That no declaratory statement shall be required to be filed by such settlers.†

Approved, June 11, 1858.

No. 341.—An Act for the relief of certain purchasers of lands within the limits of the Choctaw cession of eighteen hundred and thirty.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Commissioner of the General Land Office be authorized, and he is hereby required, to cause patents to be issued on all certificates for entries made within the limits of the Choctaw cession of eighteen hundred and thirty, at less than the true graduation price, which were issued prior to the reception, by the local land officers, of the true graduation lists, where such certificates and entries are regular in all other respects; any law to the contrary notwithstanding.

Approved, June 11, 1858.

No. 342.—An Act making appropriations for sundry civil expenses of the government for the year ending the thirtieth of June, eighteen hundred and fifty-nine.

* * * * *

SEC. 10. *And be it further enacted,* That the eleventh section of the act of Congress, approved September fourth, eighteen hundred and forty-

* See No. 48‡

† See No. 48.

one, entitled "An act to appropriate the proceeds of the public lands, and to grant pre-emption rights,"* be so amended that appeals from the decisions of the district officers, in cases of contest between different settlers for the right of pre-emption, shall hereafter be decided by the Commissioner of the General Land Office, whose decision shall be final, unless appeal therefrom be taken to the Secretary of the Interior.

* * * * *
Approved, June 12, 1858.

No. 343.—An Act making supplemental appropriations for the current and contingent expenses of the Indian department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June thirtieth, eighteen hundred and fifty-nine.

* * * * *
SEC. 2. *And be it further enacted,* That the Commissioner of Indian Affairs be, and he hereby is, authorized and required, with the approval of the Secretary of the Interior, to remove from any tribal reservation any person found therein without authority of law, or whose presence within the limits of the reservation may, in his judgment, be detrimental to the peace and welfare of the Indians, and to employ for the purpose such force as may be necessary to enable the agent to effect the removal of such person or persons.

* * * * *
Approved, June 12, 1858.

No. 344.—An Act making appropriations for the support of the army for the year ending the thirtieth June, eighteen hundred and fifty-nine.

* * * * *
SEC. 6. *And be it further enacted,* That all the existing laws, or parts of laws which authorize the sale of military sites which are or may become useless for military purposes be, and the same are hereby, repealed, and said lands shall not be subject to sale or pre-emption under any of the laws of the United States: *Provided further,* That the provisions of the act of August eighteenth, eighteen hundred and fifty-six, relative to certain reservations in the State of Florida, shall continue in force.†

Approved, June 12, 1858.

No. 345.—A Resolution to correct an error in a certain act approved May eleventh, eighteen hundred and fifty-eight.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That an error in the act approved

* See No. 48.

† See Nos. 301, 315.

May eleventh, eighteen hundred and fifty-eight, entitled "An act to enlarge the Detroit and Saginaw land districts in the State of Michigan,"* be corrected, by extending the limits of that portion of the Cheboygan district which has been attached to the Detroit district, to the line dividing ranges two and three west, instead of one and two west, the former being the line intended by the department as the western boundary of the addition to the Detroit district.

Approved, June 2, 1858.

No. 346.—An Act to continue the office of register of the land office at Vincennes, Indiana.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That to enable persons interested in titles to land in the Vincennes district, Indiana, to perfect the same, and for the transaction of such other business as may require his services, the office of Register of the Land Office at that place shall be continued for the period of three years from and after the passage of this act, if, in the opinion of the President of the United States, the public interests so long require it.

SEC. 2. *And be it further enacted,* That it shall be the duty of the register, under directions from the Secretary of the Interior, to issue such patent certificates, or other evidences of title, as may from time to time be necessary, as the basis of patents for the ancient private claims in that district that have been recognized by various confirmatory laws, and that prior to finally closing the district, three months' public notice shall be given thereof.

SEC. 3. *And be it further enacted,* That a register shall be appointed by the President, under this act, by and with the advice and consent of the Senate, which register shall be authorized to perform all such duties, both as register and receiver, as shall be prescribed by the Secretary of the Interior, and shall receive in full for the same a salary of five hundred dollars per annum, and such fees for pre-emption or bounty-land locations as existing United States laws allow, and in making transcripts of original papers for individuals, said register shall have a right to charge therefor, according to the tariff existing in the local courts of the district.

SEC. 4. *And be it further enacted,* That the officer so appointed shall be required to reside at Vincennes and to give bond for the faithful performance of his duties, the safety of the archives in his charge, and the public moneys which may be received by him, in such penalty as the President of the United States may deem necessary.

Approved, December 21, 1858.

No. 347.—An Act to confirm the land claim of certain pueblos and towns in the Territory of New Mexico.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Pueblo land claims in the Territory of New Mexico designated in the corrected lists as—

* See No. 325.

- A, Pueblo of Jemes in the county of Santa Ana,
- B, Pueblo of Acoma in the county of Valencia,
- C, Pueblo of San Juan in the county of Rio Ariba,
- D, Pueblo of Picuris in the county of Taos,
- E, Pueblo of San Felipe in the county of Bernalillo,
- F, Pueblo of Pecos in the county of San Miguel,
- G, Pueblo of Cochiti in the county of Santa Ana,
- H, Pueblo of Santo Domingo in the county of Santa Ana,
- I, Pueblo of Taos in the county of Taos,
- K, Pueblo of Santa Clara in the county of Rio Ariba,
- L, Pueblo of Tesuque in the county of Santa Fe,
- M, Pueblo of San Ildefonso in the county of Santa Fe,
- N, Pueblo of Pojuaque in the county of Santa Fe,

reported upon favorably by the surveyor-general of New Mexico, in his report of the thirtieth of September, eighteen hundred and fifty-six, to the Department of the Interior, and the claim designated as—

- O, Pueblo of Zia in the county of Santa Ana,
- P, Pueblo of Sandia in the county of Bernalillo,
- Q, Pueblo of Isleta in the county of Bernalillo,
- R, (supposed,) Pueblo of Nambe,

reported upon favorably by the said surveyor-general, on the thirtieth of November, eighteen hundred and fifty-six.

Also, the claim—

Number seven, of the town of Tecolote in the county of San Miguel,

Number eleven, of the town of Chilili in the county of Bernalillo,

Number thirteen, of the town of Belen in the county of Valencia,

reported for the favorable action of Congress, by the said surveyor-general on the thirtieth of September, eighteen hundred and fifty-seven; also the claim number two of the town of Tomé reported upon favorably by the surveyor-general of New Mexico in his report of the thirtieth of September, eighteen hundred and fifty-six, to the Department of the Interior; also the claim number twenty-nine of the town of Casa Colorado, reported upon favorably by the surveyor-general of New Mexico in his report of thirty-first December, eighteen hundred and fifty-six to the Department of the Interior, be, and they are hereby, confirmed; and the Commissioner of the Land Office shall issue the necessary instructions for the survey of all of said claims, as recommended for confirmation by the said surveyor-general, and shall cause a patent to issue therefor as in ordinary cases to private individuals: *Provided*, That this confirmation shall only be construed as a relinquishment of all title and claim of the United States to any of said lands, and shall not affect any adverse valid rights, should such exist.

Approved, December 22, 1858.

No. 348.—An Act to fix and regulate the compensation of receivers and registers of the land-offices under the provisions of the Act approved April twentieth, eighteen hundred and eighteen.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act entitled “An act for changing the compensation of receivers and registers of the land-offices,”

* See No. 10.

approved April twentieth, eighteen hundred and eighteen, shall be so construed by the proper accounting officers of the government as to restrict the aggregate amount allowed as compensation for the register's and receiver's commissions on moneys received at any land-office in any one calendar year, to the sum of twenty-five hundred dollars each; and that the registers and receivers shall not receive for any one quarter or fractional quarter more than a pro rata allowance of said maximum of twenty-five hundred dollars. Their compensation, both for salary and commissions, to commence and be calculated from the time they enter on the discharge of their duties.

Approved, February 2, 1859.

No. 349.—An Act for the punishment of the crime of forgery [of] or counterfeiting military bounty-land warrants, military bounty-land certificates, certificates of location, certificates of purchase and receivers' receipt.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That if any person or persons shall falsely make, alter, forge, or counterfeit, or cause or procure to be falsely made, altered, forged, or counterfeited, or willingly aid or assist in falsely making, altering, forging, or counterfeiting, any military bounty-land warrant, or military bounty-land warrant certificate, issued or purporting to have been issued by the Commissioner of Pensions under any act of Congress, or any certificate of location of any military bounty-land warrant, or any duplicate certificate of the location of any military bounty-land warrant, or military bounty-land warrant certificate, upon any of the lands of the United States, or any certificate of the purchase of any of the lands of the United States, or any duplicate certificate of the purchase of any of the lands of the United States, or any receipt for the purchase-money of any of the lands of the United States, or any duplicate receipt for the purchase-money of any lands of the United States, issued or purporting to have been issued by the register and receiver at any land-office of the United States, or by either of them; or if any person or persons shall pass, utter or publish as true any false, forged, or counterfeited military bounty-land warrant, military bounty-land warrant certificate, certificate of location, or duplicate certificate of location, certificate of purchase, duplicate certificate of purchase, receipt or duplicate receipt, for the purchase-money of any of the lands of the United States, knowing the same to be false or forged, such person or persons so offending shall be deemed and adjudged guilty of felony, and, being thereof duly convicted, shall be sentenced to be imprisoned and kept at hard labor for a period not less than three years nor more than ten years: *Provided nevertheless,* That nothing herein contained shall be construed to deprive the courts of the several States of jurisdiction under the laws thereof over offences declared punishable by this law.

Approved, February 5, 1859.

No. 350.—An Act granting the right of way over, and depot grounds on, the military reserve at Fort Gratiot, in the State of Michigan, for railroad purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the right of way through and the privilege of constructing depots and workshops on the public lands of the United States lying in the county of St. Clair, State of Michigan, commonly called the Fort Gratiot military reservation, be, and the same is hereby, granted to any railroad company or companies which may construct a railroad or railroads from the city of Detroit, or any other place in said State, to or near the village of Port Huron, in said State: *Provided,* That in the opinion of the President of the United States, such grant or grants be not injurious to the purposes of public defence, and that the location of said buildings on, and such road or roads as to position and width through said reservation, and the price of the land to be so occupied, being first determined by the Secretary of War, be approved by the President: *And provided further,* That if the price of such grant or grants be not paid within thirty days after the approval of the President, or if either of said roads shall not be completed within three years, or if, at any time after its completion, it shall be discontinued, the grant shall cease and determine as to such road: *And provided further,* That all the buildings to be erected upon said reservation shall be of wood, and if, at any time, it should be deemed expedient by the commanding officer of Fort Gratiot or by any other higher military authority, to destroy such buildings by fire or otherwise, no claim shall be made against the United States for damages.

Approved, February 8, 1859.

No. 351.—An Act for the admission of Oregon into the Union.

Whereas the people of Oregon have framed, ratified, and adopted a constitution of State government which is republican in form, and in conformity with the Constitution of the United States, and have applied for admission into the Union on an equal footing with the other States: Therefore—

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Oregon be, and she is hereby, received into the Union on an equal footing with the other States in all respects whatever, with the following boundaries: In order that the boundaries of the State may be known and established, it is hereby ordained and declared that the State of Oregon shall be bounded as follows, to wit: Beginning one marine league at sea due west from the point where the forty-second parallel of north latitude intersects the same; thence northerly, at the same distance from the line of the coast, lying west and opposite the State, including all islands within the jurisdiction of the United States, to a point due west and opposite the middle of the north ship channel of the Columbia River; thence easterly, to and up the middle channel of said river, and, where it is divided by islands, up the middle of the widest channel thereof, to a point near Fort Walla-Walla, where the forty-sixth parallel of north latitude crosses said river; thence east, on said parallel, to the middle of the main channel of the Shoshones or Snake River; thence up the middle of the main channel of said river, to the mouth of the Owy-

hee River; thence due south, to the parallel of latitude forty-two degrees north; thence west, along said parallel, to the place of beginning, including jurisdiction in civil and criminal cases upon the Columbia River and Snake River, concurrently with States and Territories of which those rivers form a boundary in common with this State.

SEC. 2. *And be it further enacted*, That the said State of Oregon shall have concurrent jurisdiction on the Columbia and all other rivers and waters bordering on the said State of Oregon so far as the same shall form a common boundary to said State, and any other State or States now or hereafter to be formed or bounded by the same; and said rivers and waters, and all the navigable waters of said State, shall be common highways and forever free, as well as to the inhabitants of said State as to all other citizens of the United States, without any tax, duty, impost, or toll therefor.

SEC. 3. *And be it further enacted*, That, until the next census and apportionment of representatives, the State of Oregon shall be entitled to one representative in the Congress of the United States.

SEC. 4. *And be it further enacted*, That the following propositions be, and the same are hereby, offered to the said people of Oregon for their free acceptance or rejection, which, if accepted, shall be obligatory on the United States and upon the said State of Oregon, to wit: First. That sections numbered sixteen and thirty-six in every township of public lands in said State, and where either of said sections, or any part thereof, has been sold or otherwise been disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to said State for the use of schools. Second. That seventy-two sections of land shall be set apart and reserved for the use and support of a State university, to be selected by the governor of said State, subject to the approval of the Commissioner of the General Land-Office, and to be appropriated and applied in such manner as the legislature of said State may prescribe for the purpose aforesaid, but for no other purpose. Third. That ten entire sections of land, to be selected by the governor of said State, in legal subdivisions, shall be granted to said State for the purpose of completing the public buildings, or for the erection of others at the seat of government, under the direction of the legislature thereof. Fourth. That all salt springs within said State, not exceeding twelve in number, with six sections of land adjoining, or as contiguous as may be to each, shall be granted to said State for its use, the same to be selected by the governor thereof within one year after the admission of said State, and when so selected, to be used or disposed of on such terms, conditions, and regulations as the legislature shall direct: *Provided*, That no salt spring or land, the right whereof is now vested in any individual or individuals, or which may be hereafter confirmed or adjudged to any individual or individuals, shall by this article be granted to said State. Fifth. That five per centum of the net proceeds of sales of all public lands lying within said State which shall be sold by Congress after the admission of said State into the Union, after deducting all the expenses incident to the same, shall be paid to said State, for the purpose of making public roads and internal improvements, as the legislature shall direct: *Provided*, That the foregoing propositions, hereinbefore offered, are on the condition that the people of Oregon shall provide by an ordinance, irrevocable without the consent of the United States, that said State shall never interfere with the primary disposal of the soil within the same by the United States, or with any regulations Congress may find necessary for securing the title in said soil to bona fide purchasers thereof; and that in no case shall non-resident proprietors be taxed higher than residents. Sixth. And that the said State shall never tax the lands or the property of the United States in

said State: *Provided however*, That in case any of the lands herein granted to the State of Oregon have heretofore been confirmed to the Territory of Oregon for the purposes specified in this act, the amount so confirmed shall be deducted from the quantity specified in this act.

SEC. 5. *And be it further enacted*, That, until Congress shall otherwise direct, the residue of the Territory of Oregon shall be, and is hereby, incorporated into, and made a part of the Territory of Washington.

Approved, February 14, 1859.

No. 352.—An Act for the relief of the Mobile and Ohio Railroad Company.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whereas the State of Mississippi, by its act approved on the twenty-eighth of January, eighteen hundred and fifty-two, and the State of Alabama, by its act approved on the first of December, eighteen hundred and fifty-one,* did transfer to the Mobile and Ohio Railroad Company the lands which were granted to said State under the provisions of the act of Congress approved the twentieth September, eighteen hundred and fifty, to aid in the construction of a railroad from Mobile to the mouth of the Ohio River, the said transfers of said lands so made by said States, respectively, to said company, are hereby recognized, ratified, and confirmed, and the title to all bona fide purchasers of said company are also hereby confirmed; and that the time limited by said original act of Congress for the completion of said railroad is hereby extended, and the said company is allowed further time till the twentieth of September, in the year eighteen hundred and sixty-five, to complete the same, anything in said act to the contrary notwithstanding: *Provided nevertheless*, That the said Mobile and Ohio Railroad Company be subjected to, and shall comply with all the conditions, restrictions, and limitations contained in the act of Congress above referred to, approved the twentieth September, eighteen hundred and fifty; *And provided*, That nothing herein contained shall be construed so as to release the States of Mississippi or Alabama from any liability imposed upon them by the said act of September twentieth, eighteen hundred and fifty.

Approved, February 18, 1859.

No. 353.—An Act to authorize settlers upon sixteenth and thirty-six[th] sections, who settled before the surveys of the public lands, to pre-empt their settlements.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That where settlements, with a view to pre-emption, have been made before the survey of the lands in the field which shall be found to have been made on sections sixteen or thirty-six, said sections shall be subject to the pre-emption claim of such settler; and if they, or either of them, shall have been or shall be reserved or pledged for the use of schools or colleges in the State or Territory in

* See No. 178.

which the lands lie, other lands of like quantity are hereby appropriated in lieu of such as may be patented by pre-emptors; and other lands are also hereby appropriated to compensate deficiencies for school purposes, where said sections sixteen or thirty-six are fractional in quantity, or where one or both are wanting by reason of the township being fractional, or from any natural cause whatever: *Provided*, That the lands by this section appropriated, shall be selected and appropriated in accordance with the principles of adjustment and the provisions of the act of Congress of May twentieth, eighteen hundred and twenty-six, entitled "An act to appropriate lands for the support of schools, in certain townships and fractional townships not before provided for."

Approved, February 26, 1859.

No. 354.—An Act to protect the land fund for school purposes in Sarpy county, Nebraska Territory.

Whereas by the treaty between the United States and the Omaha tribe of Indians, by which said Indian tribe ceded their lands in the Territory of Nebraska to the United States, a reservation was made of a part of section thirty-six, in town[ship] fourteen north, range thirteen east, for the Presbyterian Board of Foreign Missions; and whereas, by virtue of a joint resolution of Congress, approved March third, eighteen hundred and fifty-seven, a large portion of the remainder of said section thirty-six has been pre-empted, leaving but a fraction for the use of schools: therefore:—

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the superintendent of common schools of the county of Sarpy, in which said land is situated, shall be, and [he] hereby is, authorized to select six hundred and forty acres of any unoccupied public lands in said county in subdivisions of not less than one quarter section, in lieu of the aforesaid section thirty-six: *Provided*, That as soon as such selection shall be made it shall be the duty of such superintendent to file a notice thereof, with a description of the land selected, in the office of the register of the land-office in the Omaha land district, who shall thereupon withdraw such land so selected from the list of lands subject to pre-emption, or public or private sale in said land district, and shall report the fact to the United States Commissioner of Public Lands, and the land so selected shall, after such filing with the register, belong to the school fund of said county in all respects the same as other school lands; and the fraction of said section thirty-six remaining after satisfying the terms of said treaty, and after said pre-emptions as mentioned in the foregoing preamble, shall be subject to pre-emption, public sale, or private entry, the same as other public lands.

Approved, February 26, 1859.

No. 355.—An Act to amend an act entitled “An act authorizing repayment for land erroneously sold by the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act of Congress “authorizing repayment for lands erroneously sold by the United States,”* approved January twelfth, eighteen hundred and twenty-five, be, and the same is hereby amended, so as to authorize the Secretary of the Interior, upon proof being made to his satisfaction, that any tract of land has been erroneously sold by the United States, so that from any cause whatever, the sale cannot be confirmed, to repay to the purchaser or purchasers, or to the legal representatives or assignees of the purchaser or purchasers thereof, the sum or sums of money, which may have been paid therefor, out of any money in the treasury not otherwise appropriated.

SEC. 2. [*And*] *be it further enacted,* That, whenever any tract of land has been erroneously sold, as aforesaid, and the sum or sums of money which may have been paid for the same, shall have been invested in any stocks held in trust, or shall have been paid into the treasury of the United States, to the credit of any trust fund, it shall be lawful by the sale of such portion of the said stocks as may be necessary for that purpose, or out of said trust fund, for repayment of the purchase-money to be made to the parties entitled thereto.

Approved, February 28, 1859.

No. 356.—An Act giving the assent of Congress to a law of the Missouri Legislature for the application of the reserved two per cent. land fund of said State.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the assent of Congress be, and the same is hereby, given to the act of the Legislature of the State of Missouri, entitled “An act supplemental to an act to amend ‘An act to secure the completion of certain railroads in this State, and for other purposes,’ ” approved on the nineteenth day of November, eighteen hundred and fifty-seven, appropriating the two per centum of the net proceeds of sales of public lands in said State, reserved by existing laws to be expended under the direction of Congress, but hereby relinquished to that State; and that the proper accounting officers of the government are hereby authorized and required to audit and pay the accounts for the same, as in the case of the three per centum land fund of said State.

Approved, February 28, 1859.

* See No. 17.

No. 357.—An Act making appropriations for the current and contingent expenses of the Indian department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June thirtieth, eighteen hundred and sixty.

* * * * *

SEC. 3. *And be it further enacted*, That the President of the United States be, and he hereby is, authorized and required to cause to be surveyed, and the boundaries thereof permanently marked, the tract or tracts of land lying on or near the Gila River, in the Territory of Arizona, New Mexico, now occupied by the confederated bands of Pima and Maricopa Indians, and the sum of one thousand dollars is hereby appropriated to defray the expenses of the said survey.

SEC. 4. *And be it further enacted*, That the President of the United States be, and he hereby is, authorized and required to set apart the tract or tracts of land aforesaid as a reservation for the confederated bands of Pimas and Maricopas: *Provided*, That the said reservations shall not exceed one hundred square miles in extent.

SEC. 5. *And be it further enacted*, That the sum of ten thousand dollars is hereby appropriated to enable the Commissioner of Indian Affairs to make suitable presents to the Pimas and Maricopas, in acknowledgment of their loyalty to this government and the many kindnesses heretofore rendered by them to our citizens.

SEC. 6. *And be it further enacted*, That in adjusting the claims of half-breed Indians under the tenth article of the treaty of Prairie du Chien, of the fifteenth of July, eighteen hundred and thirty, lying within the Nemohaw reservation therein described, as surveyed by McCoy, and confirmed by section thirteen of the act entitled "An act making appropriations for sundry civil expenses of the government for the year ending the thirtieth of June, eighteen hundred and fifty-nine," approved June twelfth, eighteen hundred and fifty-eight, there shall be found a deficiency in the quantity of land necessary to carry out the intentions of said treaty, then there shall be retained out of the proceeds of that portion of the public lands excluded from said reservation, as said half-breeds claimed its boundaries by the McCoy survey and the thirteenth section of the said act of July twelfth, eighteen hundred and fifty-eight, so much money as shall equal that deficiency, estimating the same at one dollar and twenty-five cents per acre; which said sum of money shall be paid to the Secretary of the Interior, to be held by him in trust for such of said half-breeds as shall be found entitled to it, and by him be paid to them or invested for their benefit, as he shall think most judicious and proper, after the said mixed bloods shall have relinquished to the United States all their interest in and to said deficiency in said reservation.

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Approved, February 28, 1859.

No. 358.—An Act making appropriations for sundry civil expenses of the government for the year ending the thirtieth of June, eighteen hundred and sixty.

* * * * *

SEC. 11. *And be it further enacted*, That in all cases where, by the terms of any Indian treaty in Kansas Territory, said Indians are entitled to sepa-

rate selections of land, and to a patent therefor, under guards, restrictions, or conditions for their benefit, the Secretary of the Interior is hereby authorized to cause patents therefor to issue to such Indian or Indians, and their heirs, upon such conditions and limitation, and under such guards or restrictions as may be prescribed by said Secretary: *Provided*, That nothing herein contained shall be construed to apply to the New York Indians, or to affect their rights under the treaty made by them in eighteen hundred and thirty-eight at Buffalo Creek.

Approved, March 3, 1859.

No. 359.—An Act for the relief of congressional township number twenty-seven, north, of range number six, east, in Wabash County, Indiana.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the auditor of the county of Wabash, aforesaid, for the time being, be authorized and allowed to make entry in his own official name of the quantity of five hundred and thirty-seven and ninety-one-hundredths acres, in legal subdivisions, of any lands of the United States, on any part of the public domain subject to private entry, at the minimum price of one dollar and twenty-five cents per acre, the same, when so entered being hereby made, and declared to be for the benefit of the inhabitants of congressional township number twenty-seven, north, of range number six, east, in the county of Wabash, and State of Indiana, and to stand in lieu of a deficit of that quantity in the amount of school lands belonging to said township, and to be held and controlled in the same manner.

SEC. 2. *And be it further enacted*, That when the said lands shall have been selected and entered as aforesaid, and duly reported to and approved by the Secretary of the Interior, he shall cause a patent or patents to issue therefor.

Approved, March 3, 1859.

No. 360.—A Resolution in relation to the second section of the Act of Congress entitled "An act to provide for the location of certain confirmed private land claims in the State of Missouri and for other purposes."

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the second section of the act of Congress, entitled "An act to provide for the location of certain confirmed private land claims in the State of Missouri and for other purposes," approved June second, eighteen hundred and fifty-eight, is hereby so suspended in its operation and effect until the end of the thirty-sixth Congress, as that no patent or patents shall be issued, nor shall any action be had by the executive branch or department of the government, or any officer or agent thereof, under or by virtue of said section.*

Approved March 3, 1859.

* See No. 334.

PART SECOND.

TITLE I.

Duties of Registers and Receivers.

DUTIES OF REGISTERS.

[The Register of a Land Office has the custody of, and is responsible for, the safe-keeping of the township plats or maps, the tract books, purchasers' applications, &c., which constitute the permanent archives of the local land office. It is his duty to receive applications for the purchase at private entry of the public lands, to issue certificates of the purchase or entry thereof, and to note upon the township plats, and mark upon the tract book, a proper entry of the fact of the land having been sold, reporting to the General Land Office at the termination of each calendar month, an abstract of the certificates of purchase issued during the same, accompanied by such certificates and the Receiver's receipts of corresponding numbers, and also an abstract of such pre-emption declarations, under the Act of 4th September, 1841, (No. 48,) as may have been filed in his office during the same period.

The written application required by Act of 24th February, 1810, (No. 6,) for the entry of a tract of land is presented by the applicant to the Register, who appends thereto his certificate, setting forth the fact of such tract being at the time subject to private entry, and specifying the price thereof per acre. The applicant then takes said application and certificate to the Receiver of Public Moneys, to whom he makes payment, and from whom he receives duplicate receipts thereof, one of which he retains with a view of being surrendered upon his receiving his patent, and the other with the application, he delivers to the Register, who, after placing the application on file, then issues his certificate of the purchase of the land therein described, the entry thereof being thus consummated. At the termination of the month, it is the duty of the Register to forward to the General Land Office such original receipts as may have been deposited in his office during the same, accompanied by their corresponding certificates of purchase, and a descriptive abstract of the land sold during the same.

ACCOUNTS OF RECEIVERS.

MONTHLY ACCOUNTS.

In addition to the Receiver's Monthly Register of Receipts, he is required to furnish, in triplicate, a *MONTHLY account current*; in which he will

credit the United States with the moneys received during the month from the sales of public lands, and for Register's and Receiver's fees, received for locating military bounty-land warrants. These amounts, and the number of acres sold and located, are to be separately stated in gross. He is required to debit in the same account any moneys paid by him during the month upon Treasury warrants, or deposited with the designated depository; all repayments made by order of the Commissioner of the General Land Office, under the Act of 3d March, 1855, (No. 277,) of excess of purchase-money on lands sold under the Graduation Act of August 4th, 1854, (No. 251;) the amount of land-scrip surrendered; and to carry forward to the credit of the United States, in his next monthly account, any balance due the United States. One of these returns is to be sent to the Secretary of the Treasury, another to the Commissioner of the General Land Office, and the other to the Treasurer of the United States.

A statement of the Register's and Receiver's fees received during the month, for locating military bounty-land warrants, will accompany the account forwarded to the General Land Office.

QUARTERLY ACCOUNTS.

At the close of each quarter, the Receiver will forward to the General Land Office a quarterly account current, crediting the United States with the sale of each particular tract sold, and with the Register's and Receiver's military bounty-land warrant fees received during the quarter,—the latter stated in gross. He will debit the United States with all the same payments made during the quarter, as are indicated in the remarks upon monthly accounts, and will carry forward to the credit of the United States, in his next quarterly account, any balance found due the United States. He will also transmit with this account, a condensed quarterly account, which differs from the other only in the fact that the sales of land are to be stated in gross, and the Register's and Receiver's warrant fees under each of the particular acts under which the warrants are issued. It follows, as a matter of course, that the balances due the United States and carried forward upon each of these quarterly accounts, and upon the monthly account for the last month of the quarter, will be the same.

In a case where a new bond is required from the Receiver, he is to furnish under his old bond, accounts for both the fractional month and quarter ending with the date preceding that of his new bond, and the balances thus found due the United States under the old bond, must not be carried into the accounts under the new bond, but be deposited, to close the account under the old bond, at the time when he is required to make a deposit under his new bond, unless otherwise required to pay over that balance by a warrant of the treasury. The account under the new bond will commence with the transactions of the first day thereof.

The Receiver has no authority to use any of the moneys received by him in behalf of the United States, except to pay drafts drawn upon him by the Treasurer, to deposit with the designated depository, or to refund excess payments under the Graduation Act of August 4, 1854, (No. 251,) as indicated in the foregoing remarks.

ACCOUNTS OF RECEIVER ACTING AS DISBURSING AGENT.

A quarterly account is required from each Receiver acting as disbursing agent, and this account is in no way to be mixed up with his accounts as Receiver. In this account he will credit the United States with the amount

of any drafts of the Treasurer in his favor received during the quarter, and any moneys received from the sale of specie boxes. He will debit the United States with the authorized expenses of depositing, with the authorized incidental expenses, and with the Register's and Receiver's salaries and commissions for the quarter. All payments except those to the Receiver himself, are to be sustained by the vouchers of the parties to whom they are made; and in charging his mileage for making deposits, the affidavit of the Receiver must be furnished that he actually, in person, made the journey charged for, and that the distance is correct.

SALARIES AND COMMISSIONS OF THE REGISTER AND RECEIVER.

Unless otherwise specially provided by law in particular cases, the Register and Receiver are each entitled to salaries at the rate of \$500 per annum, to begin when they actually enter upon the discharge of their respective duties. (No. 268.) They are entitled, also, to charge a commission of one per cent. on moneys received from the sale of lands, and upon the value of lands located with military bounty land warrants, estimated at \$1.25 per acre; but the gross amount of commissions received by either of them, is not to exceed \$2500 for any calendar year, commencing with the date when they enter upon the actual discharge of their duties, to be charged at a rate not to exceed \$625 per quarter. See act, February 2, 1859, (No. 348.) It has been decided, however, that if the sales and locations during any one quarter are so great that the commission of one per cent. upon them would amount to over \$625 per quarter, the excess may be used to make up the deficiency in any of the other quarters of the same calendar year.

By the Act of March 3, 1855, (No. 276,) Registers and Receivers are entitled, also, to a commission of one per cent. on the difference between the amount received for lands sold at graduated prices, and the estimated value thereof at \$1.25 per acre; subject, however, to the before-mentioned proviso, that the whole amount of commissions received during any one year does not exceed \$2500.

The Register is entitled to receive his commissions at the close of each quarter; but the Receiver is only entitled to receive at the close of the quarter his commissions on lands located by warrants, and his commission on the difference between the amount received for graduated lands, and the estimated value thereof; but his commissions on lands sold, can only be charged when he has debited the United States, by payments in their behalf, with the moneys received for such sales. They are each entitled to exactly the same amount of commissions; and, it follows therefore, that in charging commissions on moneys debited to the United States, the Receiver will not charge a commission on such as result from the Register's and Receiver's fees for locating military bounty land warrants.

The Register and Receiver, at the land offices in California, are each entitled to a salary at the rate of \$3000 per annum, but to no commissions of any kind.

The Register and Receiver at the land offices in Oregon, and the territories of Washington and New Mexico, are each entitled to a salary of \$2500 per annum, but to no commissions; except that at the office at Santa Fé, New Mexico, the Register and Receiver are each entitled to commissions at the rate of \$500 per annum; it being provided that their compensation shall not exceed \$3000 per annum.

The Registers and Receivers (except those in Oregon and Washington Territories) are each entitled to charge a fee of fifty cents upon all pre-emption cases, to be paid by the pre-emptor,—the Register's fee, when the

declaratory statement is filed, and the Receiver's, when the case is proved up.

At the offices in Oregon and Washington, however, the Register and Receiver are not entitled to any fees in pre-emption cases, it being provided by law that in addition to their salaries, they "shall be entitled to no fees or emoluments of any kind whatsoever, except the Receiver's actual and necessary expenses of depositing." But as the pre-emption act of 1841, (No. 48,) provides for the payment of these fees by the pre-emptor, they will be collected by the Receiver and returned to the credit of the United States, in his monthly and quarterly accounts current.

The Disbursing Agent cannot take moneys from his hands as receiver, and apply them to this account, without a warrant of the treasury. The moneys required for the expenses of each quarter, must be estimated for in a quarterly estimate furnished to the Commissioner of the General Land Office; who, upon that estimate, requests of the Secretary of the Interior a requisition on the Treasury for the amount deemed necessary.

In a case where a new bond is required from the Disbursing Agent, he is to furnish, under his old bond, an account of all transactions for the fractional quarter ending with the day preceding that of his new bond. If a balance is found due the United States, under his old bond, that account will be closed by debiting the United States with the amount under the head of "To Cash Transferred," and the same amount will be credited the United States in the account under his new bond (commencing at the date thereof) under the head "By Cash Transferred." But if a balance be due the Disbursing Agent, no transfer will be made, but a draft will be sent to him for the amount so found due.]*

* The following Act of Congress, relating to the duties of Receivers, is inserted here for convenient reference.—*An Act to amend an act entitled "An Act to provide for the better Organization of the Treasury, and for the Collection, Safe-keeping, Transfer, and Disbursement of the Public Revenue."* Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act to provide for the better organization of the treasury, and for the collection, safe-keeping, transfer, and disbursement of the public revenue, approved August sixth, eighteen hundred and forty-six, be and the same is hereby so amended that each and every disbursing officer or agent of the United States, having any money of the United States entrusted to him for disbursement, shall be and he is hereby required to deposit the same with the Treasurer of the United States, or with some one of the assistant treasurers or public depositaries, and draw for the same only in favor of the persons to whom payment is to be made in pursuance of law and instructions; except when payments are to be made in sums under twenty dollars, in which cases such disbursing agent may check in his own name, stating that it is to pay small claims.

SEC. 2. *And be it further enacted*, That the Treasurer of the United States, assistant treasurers, and public depositaries shall safely keep all moneys deposited by any disbursing officer or disbursing agent of the United States, as well as any moneys deposited by any receiver, collector, or other person which shall be the moneys of or due or owing to the United States, and for a failure so to do shall be held guilty of the crime of embezzlement of said moneys, and subject to the punishment provided for embezzlement in the act to which this is an amendment.

SEC. 3. *And be it further enacted*, That it shall be the duty of each and every person who shall have moneys of the United States in his hands or possession to pay the same to the treasurer, the assistant treasurer, or public depositary of the United States, and take his receipt for the same, in duplicate, and forward one of them forthwith to the Secretary of the Treasury, and for a failure to make such deposit, when required by the Secretary of the Treasury, or any other department, or the accounting officers of the treasury, the persons so failing shall be held guilty of the crime of embezzlement, and subject to the punishment for that offence provided in the act to which this is an amendment.

Approved, March 3, 1857.

CIRCULARS OF INSTRUCTION.*

No. 361.

*Circular to Registers of the United States Land Offices.*GENERAL LAND OFFICE,
March 14, 1843.

Gentlemen :—The neglect of some of the land officers to call on the Surveyors General for subdivisions of fractional sections, when rendered necessary by applications of purchasers, has occasioned much delay at this Office in issuing patents, and adds unnecessarily to the correspondence. The purchasers justly complain of the delays arising from this cause of suspension, and I have therefore to request that you will furnish the Surveyor General with lists of such sections, or parts of sections, as have been sold and still require subdivision plats under his hand to complete the plats in your respective offices.

Your attention is particularly called to the direction contained in the last clause of the circular of instructions from this Office to the Registers and Receivers of the 8th May, 1832, (Laws and Instructions, part II, page 565,) which requires that the Register shall furnish the Surveyor General with a schedule of the fractional sections to be subdivided; and you are requested hereafter to call upon that officer, from time to time, for such subdivision plats as shall be required, instead of making the subdivisions yourselves, which practice must be discontinued.

A copy of this circular has this day been sent to each Surveyor General, with instructions to secure their prompt co-operation.

I am, very respectfully, your obedient servant,
———, Commissioner.

No. 362.

*Circular to Receivers of public moneys, respecting charges for mileage and risk in making deposits and charges for transportation of specie to the place of deposit.*GENERAL LAND OFFICE,
May 17, 1845.

Sir :—It is deemed important to consolidate into one general letter of instructions the regulations prescribed by the Treasury Department, under the provisions of the act of Congress approved 22d May, 1826, entitled "An act to compensate Receivers of public moneys for transporting and depositing the same."

In virtue of the authority vested in the Secretary of the Treasury by the act above mentioned, he issued a circular on the 1st of May, 1831, which contained the following instructions as to the compensation to be allowed Receivers for depositing public moneys, viz :

†["As a compensation for their *expense* and *labor* in the performance of this duty, they will be entitled to receive for every mile travelled from

* Where other Circulars are referred to than those contained in this Title, they may be found in their appropriate places in other Titles, unless they have been superseded, or are not of sufficient importance to insert here; those may be found in Part II., of "Opinions and Instructions."

† Modified by Circulars of June 28, and July 18, 1854, (No. 377.)

their respective offices to the bank of deposit and returning, computing the distance by the *nearest route* to the nearest office in which their deposit will be received as cash, if by land, at the rate of twelve and a half cents per mile; if by water, six cents per mile; with such additional allowance for the transportation of specie as will remunerate them for the increased expenses attending such transportation. Claims for such additional allowances for the transportation of specie must be supported by satisfactory vouchers.

“As a compensation for the *risk* incurred, there will be allowed a percentage of the *one hundredth* part of *one per cent.* on the amount deposited for every *ten miles* of distance between the Land Office and place of deposit by the nearest route.”

The Secretary of the Treasury, in a Circular of the 15th March, 1844, modified the above instructions, in part as follows, viz :

“The circular from this Department, under date of May 1, 1831, prescribing the rates of compensation to Receivers of public moneys for making deposits, is hereby so modified, in cases of deposit, *made after the receipt* of this circular, as to allow Receivers who transport the public moneys by water to the place of deposit, whenever that route affords the best facility for such transportation, as a compensation for risk incurred, one hundredth part of one per cent. on the amount deposited, for every ten miles of distance between the Land Office and place of deposit by the route actually so travelled—the rate of compensation prescribed by the circular aforesaid, in other respects, to remain unchanged.]

“Whenever a Receiver makes a charge in his accounts, under this circular, he will be required to forward a certificate of the Register of the Land Office that the said charge is reasonable and proper.”

The circular of the Secretary of the Treasury of the 19th June, 1844, to Receivers of public moneys, further directs :

“That whenever you make a deposit of public moneys, you will obtain triplicate receipts from the cashier of the bank wherein the deposit is made, specifying *over his own signature*, either by endorsement or on the face of such receipt, the amount of gold and silver included in such deposit; one of which receipts you will retain, one you will transmit to this Department, and the third you will forward with your appropriate account current to the Commissioner of the General Land Office, as a voucher, to enable the accounting officers to regulate the allowance for depositing specie.

“In charging your expenses for the transportation of specie to the place of deposit, you will transmit to the Commissioner of the General Land Office, vouchers for all payments made by you, supported by your affidavit that they are just and true, and the certificate of the Register that, in his opinion, such charges are reasonable.

“If the water route affords the best facility for such transportation, you are authorized to take it, and charge for risk as prescribed by the circular from this Department of the 15th March last; and in all such cases you will transmit with the appropriate account the certificate of the Register that the water route does afford the best facility for making such deposits, that the *distance charged for is correct*, and that all the charges incident thereto are reasonable and proper.”

As the foregoing instructions contained in the several circulars of the Secretary of the Treasury of the 1st May, 1831, and 15th March and 19th June, 1844, do not appear to have been fully understood and complied with by the receivers of public moneys, it has been deemed advisable to issue this circular explanatory of the same, which, it is requested, will, after the date of its receipt by you, govern and regulate your charges for

making deposits of public moneys, and also your charges for the transportation of specie from the Land Office to the place of deposit.

*[1. As a compensation for the *expense* and *labor* of making a deposit, you will be entitled to receive for every ten miles travelled from the Land Office to the place of deposit which has been, or may hereafter be designated by the Secretary of the Treasury, computing the distance by the best and most usual route travelled, if by land, at the rate of twelve and a half cents per mile, going and returning; and if by water, at the rate of six cents per mile, going and returning.]

†[2. As a compensation for risk incurred in making the deposit, there will be allowed you a per-centage of the one hundredth part of one per cent. for every ten miles of the distance travelled between the Land Office and place of deposit. If the water route is the cheapest, and affords the best facility of reaching the place of deposit, when conveying the public moneys, you are authorized to adopt it, and to charge for risk, as above mentioned, according to the distance by that route; and in all such cases you are required to transmit, with the appropriate account in which the same shall be debited, the Register's certificate that the water route so travelled is the cheapest, and does afford the best facility for making the deposit, and that the distance charged for is, in his opinion, correct.]

3. Whenever you make a deposit of public moneys, you will obtain *triplicate* receipts from the cashier of the bank wherein such deposit is made, specifying on the face of the receipts, or by endorsement on the same, *over his signature*, the amount of gold and silver, respectively, included in such deposit; one of which receipts you will retain, one you will transmit to the Treasury Department, and the third you will forward to the Commissioner of the General Land Office, as a voucher.

TRANSPORTATION OF SPECIE.

The compensation that will be allowed you for the transportation of specie from the Land Office to the place where you have been, or may hereafter be directed by the Secretary of the Treasury to deposit public moneys, will be confined to the actual expenses paid by you for the use of the wagon, team, and driver, when the specie is transported by land, or for the sum paid as freight on specie conveyed by steamboat, or for both, as the case may be, when specie is transported a part of the distance by land, and a part by water; and it is enjoined upon you to procure the transportation of the same, whether by land or water, on the most economical terms.

In special cases, where the amount of specie transported is large, and causes exist which make the transportation hazardous unless protected, a reasonable per diem allowance will be made for the employment of a guard. Of the necessity of such protection, however, the most satisfactory reasons must be adduced in every instance. Your own representation of such necessity should be corroborated by that of the Register and other well-known individuals, in whose statements confidence can be placed.

In order that the Department may be possessed of the best evidence of the correctness of your charges in all such cases, you will strictly observe the following instructions, viz :

1. If a wagon, team, and driver be employed for the transportation of the specie, you will forward, with the appropriate account, a receipt signed

* Modified by Circular of July 18, 1854, fixing the mileage at ten cents per mile, whether by land or water.

† Obsolete. See Circular of July 18, 1854, (No. 377.)

by the person with whom you shall make the contract, in which receipt must be stated the number of kegs or boxes of specie transported, the date of deposit of such specie, the place of departure and place of arrival, with the distance between the two places, and the number of days employed in going and returning. The receipt must be accompanied by your affidavit that the per diem charge for the transportation is just and reasonable.

2. If a steamboat be employed for the transportation of the specie, a receipt of the captain or clerk of the boat is required for the sum paid as freight of the same, in which receipt the number of kegs or boxes of specie transported on board of said boat, and date of arrival of such specie at the place where landed, must be stated.

3. If specie be transported a part of the distance by land to any point on the route, and from thence by water to the place of deposit, then the above instructions applicable to transportation by land as well as by water, must be strictly complied with.

4. If a guard be employed by you for the security of the specie while in transit from the Land Office to the place of deposit, for the whole distance, or for any part of the same, his receipt for the sum paid him, as a per diem allowance, is required; in which receipt, must be specified the number of kegs or boxes of specie transported; the date of deposit of such specie; the place of departure and place of arrival; the distance between the two places; and the time employed in going and returning. The receipt must be accompanied by your affidavit that the per diem paid the guard is just and reasonable, and the Register is required to certify that the number of days he may charge for is correct.

5. If specie be transported by a wagon and team owned by you, a reasonable per diem allowance will be made for the use of the same, sufficient to cover the actual cost of transportation, exclusive of your personal expenses on the trip,—it being intended and understood that the allowance for mileage and risk in making a deposit are to cover your personal expenses. This item you will debit in your next quarterly account to be rendered thereafter, specifying the number of kegs or boxes of specie transported, the date of deposit of such specie, and the number of days employed in going and returning. It is also required that you will forward with the account, your own affidavit that your charge for the transportation is just and reasonable.

6. Whenever the specie boxes used in the transportation can be disposed of at the place of making the deposit at such price as will justify the sale of them, you are requested to sell them, and to credit the amount received for the same in your next account to be rendered thereafter; but should you be unable to dispose of them upon such terms, it is desirable they should be carried back to your office, to be used again for a like purpose on another occasion.

I am, sir, very respectfully, your obedient servant,

_____, Commissioner.

_____, Esq :
Receiver of Public Moneys,
_____, Land Office at _____.

No. 363.

Circular to Registers of Land Offices and Receivers of Public Moneys.

GENERAL LAND OFFICE,
October 13, 1845.

Gentlemen:—The Secretary of the Treasury having so far modified his Circular of Instructions, under date of 13th June last, relative to accounts for postages, as to dispense with a special order from the Department, for payment in each case, as therein prescribed, the instruction in my Circular of 28th June last, is of course modified accordingly.

The postages on all public letters and documents charged to both of your offices, from day to day, is to be paid by the Receiver, and at the end of the quarter, he will transmit a detailed account of the same, receipted by the Postmaster and verified by your oaths, as vouchers to his quarterly account.

Should it be considered, between you, a convenient arrangement for the Register to pay his own postages as they accrue, and at the end of the quarter to be re-imbursed by the Receiver for the amount of the Postmaster's account for the whole term, (verified by his own affidavit,) such course may be adopted.

The official inconvenience found to result from including many subjects in the same letter, has induced me to rescind the instructions of the circular aforesaid in this respect, and to revert to the former regulation under the Circular of 25th May, 1831, (sixth clause thereof,) which requires that every subject should constitute a separate letter.

All letters, reports and documents transmitted by you to this Office, are to be endorsed in the mode prescribed by the Secretary of the Treasury in the annexed Circular.

Very respectfully,

Your obedient servant,

———, Commissioner.

TREASURY DEPARTMENT,
March 16, 1843.

All official letters, reports, and communications to this Department, or to the head of any office thereof, will be folded and enclosed in a wrapper; and on the middle fold will be endorsed the name of the person making the same, with his official title, the place from which sent, the date, and a brief analysis of its contents, in the manner indicated by the annexed form. If more than one paper is sent, the analysis should contain the substance of all such papers, or the subject of them, and the number of papers enclosed should be stated. On the outside wrapper should be endorsed the name of the office from which the communication is sent, when transmitted by any officer of the Government.

An observance of this regulation will much promote the convenience of all the officers and clerks of the Department, and will ensure a more prompt attention to the communications thus endorsed.

The heads of the different offices of the Department are particularly requested to conform to this rule, and to enforce it on all who address communications to them.

J. C. SPENCER,
Secretary of the Treasury.

✍ When there is more than one paper enclosed, each paper must be

separately endorsed, as to its nature, viz :—"Return of specie"—"Monthly return of moneys received and disbursed"—"Weekly return of moneys received and disbursed," &c.

ENDORSEMENT.

E. Curtis, Collector. New York, March, 17, 1843.

Account of Receipts and Expenditures for week ending 11th instant.

Also transmits application of A. B. to make entry under Act of 1st March, 1823, with three papers enclosed.

No. 364.

Circular.

GENERAL LAND OFFICE,
May 14, 1846.

Gentlemen :—Enclosed I send you a copy of an act entitled "An act to repeal a part of the act entitled 'An act supplementary to the several laws for the sale of the public lands,' approved April fifth, one thousand eight hundred and thirty two," and for other purposes, approved May 8th, 1846. (No. 104.)

Under the provisions of this act, forty-acre tracts, or quarter-quarter sections, are subject to entry, selection, or location, precisely in the same manner that eighty-acre tracts, or half-quarter sections, have heretofore been ; consequently, the affidavits for the entry of quarter-quarter sections heretofore required will now be dispensed with ; and it will no longer be necessary to note these entries on the returns as being under the Act of fifth April, 1832. All lands, however, will be offered at *public sale* in half-quarter sections, or eighty-acre tracts, as heretofore.

Very respectfully, your obedient servant,

JAMES SHIELDS, Commissioner.

Register of the Land Office, and Receiver of Public Moneys at ———.

No. 365.

Circular.

GENERAL LAND OFFICE,
November 10, 1847.

Gentlemen :—Complaints having been made to this Office, that Registers of some of the district land offices demand fees of persons wishing to locate Military Bounty Land Warrants, it is deemed proper to inform you that there is no warrant of law for fees in such cases, and that the reception of them is expressly inhibited.

Five hundred dollars per annum is allowed as a salary for Registers, and for this all services required of those officers pursuant to acts of Congress must be performed, *except where there is an express allowance made by law.*

This is the principle that must govern in all cases where application is made to enter land under any description of certificate, scrip, or warrant, and any complaints of this character, made to this Office after the reception of this circular, will be submitted to the President, for such action as he may consider necessary in the premises.

Your attention is called to the annexed copy of a circular from the Secretary of the Treasury, of 18th October, 1843, and you are requested to acknowledge the receipt hereof by return mail.

Very respectfully, your obedient servant,

_____, Commissioner.
Register and Receiver, Land Office at _____.

Circular to Registers of the Land Offices and Receivers of Public Money.

TREASURY DEPARTMENT,
October 18, 1843.

Sir:—It has been intimated to this Department, that at some of the Land Offices fees are demanded or received for services prescribed by law, but to which the law has attached no compensation.

Such practice, if it exists, and under whatever circumstances, must cease. The right to demand or receive fees of those for whom official duties are performed, by Registers and Receivers, can only be derived from the express authority of law, and must be limited to the services and occasions for which the law has prescribed them. The public have a right to be protected from all charges for your official services except such as have been imposed upon them by law; and under no circumstances, therefore, can fees not allowed by law, or more than the legal compensation, be demanded or received by the Registers or Receivers for the performance of their official duties. If the legal compensation be deemed inadequate to the labor or responsibility of the service, the remedy is not with the Land Office, nor with this Department, but with Congress alone. It cannot be tolerated by this Department that land officers shall regulate the amount of their own compensation, and appeal for payment to the generosity of those to whom their official services are rendered. I feel it my duty, therefore, as well to enforce the law and protect the community from unauthorized demands as to insure the purity of the public service, distinctly to apprise you that the prohibition of the demand or receipt by Registers or Receivers for official services of any compensation not prescribed by law, must henceforth be regarded as absolute and peremptory.

(Signed) J. C. SPENCER,

To the _____.

Secretary of the Treasury.

No. 366.

Circular to Registers and Receivers of the several Land Offices of the Union.

TREASURY DEPARTMENT,
December 6, 1847.

The Registers and Receivers in the several Land Offices in the Union, cannot become purchasers of, depositories or agents for the sale of, the Bounty Land Warrants or Certificates, or any other species of land scrip for location or in payment of public lands. Their duty in relation to such warrants, certificates, or scrip, is prescribed by the law, and is confined to their reception or location, as therein designated. It is expected that these instructions will be faithfully observed, and it will be the duty of this Department to report all violations of these regulations for such action as may be deemed proper by the President of the United States.

R. J. WALKER.

No. 367.

Circular.

GENERAL LAND OFFICE,
August 24, 1848.

Gentlemen :—In order that the business of this Office may be carried on promptly and energetically, it is absolutely necessary that the District Land Officers should make their returns immediately after the close of each month and quarter. To do this, it is only necessary that the operations of each day should be entered at the close of it, in the monthly and quarterly returns; and thus, within two or three days after the close of the month or quarter, those returns can be mailed to this Office.

It is hoped and expected, that these instructions, the receipt of which you will please acknowledge, will be strictly attended to in future, as the prompt discharge of the business in this Office imperatively demands, that such repeated neglect should not be overlooked. There are of course many meritorious exceptions to which this requirement is not applicable.

Very respectfully, your obedient servant,

RICHARD M. YOUNG, Commissioner.

Register and Receiver at ———.

No. 368.

GENERAL LAND OFFICE,
January 5, 1849.

Gentlemen :—The numerous entries of tracts which had been previously sold at some of the Land Offices, have become extremely embarrassing to this Office, and is in every instance detrimental to the interests of the purchaser. They are owing, it is believed, to the Register relying upon the marks and indications on the plats alone, in ascertaining whether the tract applied for has been entered, or is still vacant. I have therefore to urge upon the Register the necessity of keeping the sales of each day, promptly and correctly posted in the tract books, and whenever a purchaser presents his application, to make a careful examination of the tract book in connection with the plat, to ascertain whether the tract applied for is certainly vacant, before he certifies to that fact.

The adoption of, and rigid adherence to, the course here suggested, will effectually remedy the evil complained of.

It is also enjoined upon the Register and Receiver to make a rigid and careful examination and comparison of their respective returns, the one with the other, and each with the purchaser's application, plats and tract books, with the view of detecting and correcting any errors or discrepancies that may appear in the orthography of the names, description of the tracts, quantity, purchase-money, &c., before they are certified to, and transmitted to this Office, as is required by the 33d clause of Circular of 25th May, 1831,* and the Circular of 29th September, 1831.†

RICHARD M. YOUNG, Commissioner.

To the Register and Receiver at ———.

* The thirty-third clause of the Circular of 25th May, 1831, requires, that prior to the transmission of each monthly abstract of sales, with the receipts and certificates of purchase, the same shall be carefully compared with the "*applications*" and maps. The greatest particularity is enjoined as to the correct *orthography of the name*, and the correct designation of the tract. The Register is also required to be punctual in marking on the township plats, *from day to day*, the lands sold.

† The Circular of 29th September, 1831, to Registers and Receivers, requires:—

"First. That prior to the transmission of the monthly abstract of sales, with the receipts and certificates of purchase to this Office, a careful examination and com-

No. 369.

Circular.

GENERAL LAND OFFICE,
July 23, 1849.

Gentlemen :—In the Circular from this Office of the 31st August, 1830, the following regulation is prescribed respecting the changes of entry which may be ordered pursuant to the acts of Congress of 3d March, 1819, (No. 11,) and 24th May, 1824, (No. 14,) viz :—

“The Receiver will take a receipt from the purchaser for the purchase-money of the tract erroneously entered, as if the same was refunded, which receipt will be a voucher to the Receiver’s credit, to be introduced into the proper monthly and quarterly accounts,” &c.

These acts, it will be observed, do not authorize an actual repayment, which, in fact, it is obvious, was never contemplated by the regulation itself, but merely require the application and transfer of the money which was paid on the wrong entry to the right one ; the rule having been adopted as one of official convenience.

By a recent act of Congress, approved 3d March, 1849, all moneys receivable from customs, and from all other sources, are required to be paid immediately into the treasury “without abatement or reduction,” &c.

To avoid any apparent or real incompatibility in our practice with that act, the aforesaid regulation is hereby *rescinded* ; and hereafter, when a change of entry is ordered, pursuant to the acts aforesaid, the Register will issue, as in ordinary cases, his certificate of purchase, only adding to it a *marginal note* showing the transfer of the payment from the erroneous entry to the new one, referring to the date and No. of the former, the date of the authority for the transfer, and making proper references to the proceedings on the books and plats of your office.

No receipt in such a case is to be issued by the Receiver, unless the area of the new entry is greater than the old one ; when, of course, such excess must be paid for, and receipts issued for the same, the Receiver debiting himself accordingly.

The new entries must always be reported in the monthly returns, with an explanatory note showing, in each case, when fully paid for by the transfer of the payment from the old entry, and also when there is a further payment on account of excess ; and only the *excess paid* for is to be carried into the Receiver’s *quarterly* account.

Such changed entries must always appear at the foot of your monthly returns as addenda, and must not affect the aggregate sales, either as to quantity or purchase-money, further than the excess in areas, and purchase-money for the same.

In any case which may be reported to this Office for repayment, and in which the Department may decide that the party is legally entitled, such repayment will be made by warrant from the treasury.

Very respectfully, your obedient servant,

J. BUTTERFIELD, Commissioner.

—, Register and Receiver.

parison is to be made by the Register and Receiver of the same land office (or under the superintendence of one or both of them) of their respective abstracts, with the receipts, certificates of purchase, and the entries on the maps and tract-books, and of all these documents with each other, that all errors therein may be immediately detected and corrected, and that in all respects they may conform to the circular letter of instructions issued from this Office under date of the 25th May last.

Second. That the fact of such examination and comparison having been made, is to be certified on each abstract, by the Register and Receiver, or either of them, as the case may be.

No. 370.

Circular instructions to Collectors and Surveyors acting as Collectors of the Customs and Receivers of Public Moneys.

TREASURY DEPARTMENT,
September 10, 1849.

The following additional instructions are rendered necessary in view of the provisions of the Act of 3d March, 1849, entitled "An act requiring all moneys receivable from customs and from all other sources to be paid immediately into the Treasury, without abatement or deduction, and for other purposes :—"

First. You are hereby directed to close up your accounts to the 30th June, 1849, leaving all difficulties or suspended items connected therewith to be hereafter finally adjusted, precisely as if you were out of office and another person had succeeded you on that day, or as though it was the close of a series of accounts under an old bond; the object in view being to cause a perfect and entire settlement of all accounts previous to the commencement of operations under the above act.

Second. Inasmuch as before this will have reached you (in the absence of instructions to the contrary) you will have introduced the balance due on the 30th June, 1849, into your weekly and monthly accounts, to carry into future effect the above instructions, it will be necessary for you, on the 30th September, 1849, to render *two* accounts, in *one* of which you will credit the United States with the balance admitted to be due on the 30th June, 1849, and show on the *debit* side any payments you may have made thereof into the Treasury on account of said balance, or as commissions, expenses of depositing, or on account of expenses incurred prior to 30th June, 1849, which are properly payable out of the aforesaid balance, and chargeable thereto; the other account will show, simply, your gross receipts since the 30th June, 1849, and the payments into the Treasury on account thereof. These accounts are independent of that as disbursing agent, which must be rendered as heretofore instructed.

W. M. MEREDITH,
Secretary of the Treasury.

No. 371.

Circular.

GENERAL LAND OFFICE,
November 1, 1849.

Gentlemen :—It has been recently intimated to this Office that clerks employed by some of the District Land Officers act as the agents for persons having Land Warrants to locate, and receive fees for securing desirable tracts of land, which otherwise could not be obtained with such warrants.

You will please make inquiry of the clerk or clerks employed in your

* The first section of the act referred to, provides, "That from and after the thirtieth day of June, eighteen hundred and forty-nine, the gross amount of all duties received from customs, from the sales of public lands, and from all miscellaneous sources, for the use of the United States, shall be paid by the officer or agent receiving the same, into the Treasury of the United States, at as early a day as practicable, without any abatement or deduction on account of salary, fees, costs, charges, expenses, or claim of any description whatever: *Provided*, That nothing herein contained shall be construed to alter the existing laws regulating the collection of the revenues of the Post Office Department."

office, if any there be; and if such practice is found to exist, it must be immediately arrested by their removal, as this Office, in all cases, will hold Registers and Receivers responsible for the illegal acts of their agents.

In future, when a Register or Receiver finds it necessary to employ a clerk, the clerk will be required to take and subscribe an oath according to the annexed form, which oath will be recorded and filed in the office in which he may be employed.

The fee of *fifty* cents for all your necessary services in entering the location of a warrant for 160 acres, or *twenty-five* cents for a 40 acre warrant, giving the usual certificate of location, filling blank forms, and making the necessary entries, &c., is all the law allows you to receive. No fees are chargeable by law where the location is made by or for the use of the volunteer or soldier to whom the warrant may have issued.

Should you administer the required oath to a person applying to locate a warrant, no additional fee can be received therefor, as the act approved June 12, 1840, entitled "An act to authorize Registers and Receivers to administer oaths," &c., (No. 41,) prohibits the reception of a fee for such service.

Enclosed are circulars of October 18, 1843, and November 10, 1847,* on the subject.

Very respectfully, your obedient servant,
J. BUTTERFIELD, Commissioner.

———, Register and Receiver.

(Form of oath to be in Manuscript.)

I, A. B., having been employed by C. D., Register or Receiver of the Land Office at ———, as clerk in his office, do solemnly swear that I will truly and faithfully execute the trust committed to me according to law and the instructions of the Department. A. B.

Subscribed and sworn to, before me, this ——— day of ———, A. D. 18—. J. P. (Or other person authorized to administer an oath.)

No. 372.

Circular.

GENERAL LAND OFFICE,
January 20, 1851.

Gentlemen:—All official returns, communications, and letters on business of every kind, sent to the General Land Office, will be folded in the form of this circular, and endorsed in a plain, neat hand-writing, with the name of the office; the place from whence sent; the date of transmission; *a brief statement of the contents*; and signed by the writer with his official title; as near as may be, in the manner indicated by the form endorsed hereon; and then enclosed in a separate wrapper, carefully sealed up, and addressed to the Commissioner of the General Land Office, at Washington City.

When bounty land warrants or other documents are transmitted, they should be in one or more separate packages, accompanied by the abstract, and a letter stating the number of packages, and endorsed on the back, Register, ———, &c., transmits Military Land Warrants No. ——— to

* See note, p. 315.

No. ——— inclusive, located during the month of ——— 18—, under Act of ———, 18—, with abstract.

All other returns will be transmitted as heretofore. The official inconvenience found to result from the practice of embracing more than one subject in a letter, induces me to direct, that in every case hereafter, you will make *each subject the contents of a separate letter*.

The great increase in the business of the office absolutely requires a strict observance of this rule in future, as it greatly promotes the convenience of the Department, and insures more prompt attention to the communications thus folded and endorsed.

Very respectfully, your obedient servant,

J. BUTTERFIELD, Commissioner.

Register and Receiver at ———.

INDORSEMENT.

Land Office — at —, January 20, 1851.

A. B., Receiver, transmits monthly return and quarterly account, viz :
Package No. 1, Monthly return for ———. Package No. 2, Receipts.
Package No. 3, Quarterly Account for 1st quarter. A B., Receiver.

or

Land Office — at —, January 20, 1851.

A. B., Register, &c.

No. 373.

Circular.

GENERAL LAND OFFICE,
August 14, 1851.

Gentlemen :—In order that the business of this Office may be carried on promptly and energetically, it is absolutely necessary that the District Land Offices should make their returns *immediately after the close of each month and quarter*. To do this, it is only necessary that the operations of each day should be entered at the close of it in the monthly and quarterly returns; and thus, within two or three days after the close of the month or quarter, those returns can be mailed to this Office.

It is hoped and expected that these instructions, the receipt of which you will please acknowledge, will be strictly attended to in all cases, as the prompt discharge of the business in this Office imperatively demands it.

Very respectfully,

Your obedient servant,

J. BUTTERFIELD, Commissioner.

Register and Receiver at ———.

No. 374.

Circular to the Registers and Receivers of the United States Land Offices.

GENERAL LAND OFFICE,
September 14, 1852.

Gentlemen :—By the Circular of Instructions from this Office of the 2d April last, Receivers are instructed to charge themselves “in their quar-

terly accounts, with the amount of fees received by both themselves and the Registers, and credit themselves with the per centage, to which both are entitled for fees and sales not exceeding twenty-five hundred dollars to each per annum, the amount of per centage allowed by law. Any amount beyond that sum, either for fees or per centage, will go into the Treasury.”*

As the fees to which you are entitled are to be paid at the time of making the location, it follows that, if the warrants are retained in your office until the expiration of forty days after the location, as required by the Circulars of Instructions issued under the acts of 1847 and 1850, it will be impracticable for this Office to adjust your accounts as promptly as the public interest requires. The Secretary of the Interior has, therefore, directed that all warrants, whether found to interfere with “Declaratory Statements” or not, shall be returned at the expiration of the month during which they were located. Should they subsequently be found to interfere, they will be returned to you for re-location, or that the consent of the settler may be obtained, where that has not been done.

Receivers will make the charges and credits in their quarterly accounts as Disbursing Agents, but will make no deposit of any excess over the maximum allowed by law, unless specially directed so to do.

In the *circular* from this Office of the 23d March last, it is stated, that by the terms of the Act of 22d March, 1852, the fees allowed are \$1 for locating 40 acre warrants; \$2 for an 80; \$4 for an 160. The *act* says that you shall be allowed the same compensation or per centage to which you are entitled by law for sales of the public lands for cash at the rate of \$1 25 per acre. Each of you will, therefore, charge one per cent. only upon the value of the land *actually* located at \$1 25 per acre; the direction in the circular being designed chiefly as public notice to the owners of warrants of the amount they would have to remit to you, and which is correct in all cases where fractions were not applied for.

JOHN WILSON, Acting Commissioner.

No. 375.

Circular.

GENERAL LAND OFFICE,
November 7, 1853.

A misunderstanding having evidently arisen at the local land offices, in regard to the purport or design of that portion of the Circular of the 20th of July† last, having relation to the rendition of the returns to this Office, which is imposing on the land officers and this Office unnecessary labor, and leading to a useless waste of stationery, the following directions are deemed necessary:

Instead of transmitting *all other returns* than Bounty Land Warrants under the Acts of 1847, 1850, and 1852, *separately from each other*, with a letter accompanying each item or description of returns, as has been done by a number of the local land officers under the fourth paragraph of Circular of 20th July, 1853, it was designed that “*all other returns*” referred to should be transmitted separately from the Military returns, and with a letter referring to them and giving a description of such returns and number of packages, &c., where they were sufficiently heavy to render it necessary to divide them into two or more packages—that is, the Register should

* See No. 383.

† See note, p. 315.

transmit his Abstract of Sales, Register of Declaratory Statements, Certificates of Purchase and Receiver's Receipts, List of Patents delivered, &c., &c., comprising his return, with a letter describing what accompanied it; and the Receiver should transmit his Monthly Register of Receipts, Accounts current for the month, Abstract of Revolutionary Bounty Land Scrip, and at the end of a quarter include his Quarterly Returns, with but one letter, referring therein to "each description of returns." In reference to the fifth paragraph of said Circular, which would appear to confirm the view taken by many land officers as to the requisition of a separate letter with every subject of their returns, I have to state that it was designed to refer entirely to the correspondence necessarily had with this Office, growing out of past entries or locations; and the design was to prevent, in such correspondence, the blending in one letter, a case having relation to a military location under Act of 1847, one under Act of 1850, another under Act of 1852; one founded on a pre-emption claim, another on a private entry, another in relation to a private claim, and another connected with a repayment of money on a cancelled entry, &c. The division of labor in the office, renders it necessary that each of these subjects, where they are unconnected with each other in any particular case, should be embraced in a distinct letter; otherwise, it leads to delay, inconvenience, and sometimes to neglect, by a necessity of awaiting the action on one of the subjects in the letter before it is referred to the clerk having charge of the other, and then, either divest the files of one or the other of the clerks of the papers upon which he has acted, or render it requisite to make a copy of the letter with endorsements as to where the original may be found.

I take this opportunity of again enjoining on you the necessity of observing the rules heretofore prescribed in reference to the folding and endorsement of the contents of communications addressed to this Office.

Respectfully, your obedient servant,
JOHN WILSON, Commissioner.

To Register and Receiver at ———.

No. 376.

Circular to Receivers of Public Moneys, Rescinding in part that of the 17th May, 1845, relative to compensation for depositing.

GENERAL LAND OFFICE,
June 28, 1854.

Sir:—You are advised that by regulations of the Treasury Department issued the 16th and 26th instant, the travelling expenses hereafter to be allowed you will be ten cents per mile, for the distance between your office and the place of deposit, computing it by the nearest and most usual route of travel, whether it be by land or water, and no other allowance will be made for depositing, than the amount paid for transportation of specie and guard service.

This rescinds so much of the circular from this Office of the 17th May, 1845, issued under that of the Treasury Department of the 1st May, 1831, as allowed twelve and a half cents for every mile travelled by land, and six cents by water, and an additional compensation of the one hundredth part of one per cent. for every ten miles upon the amount deposited. After the receipt of this by you, no allowance upon any deposit *subsequently started from your office*, will be made for risk, and that for mileage will

be as directed by the Secretary. In other respects you will be governed by the Circular of the 17th May, 1845, above referred to.

JOHN WILSON, Commissioner.

Receiver of Public Moneys at ———.

No. 377.

Copy of Circular to Receivers of Public Moneys.

TREASURY DEPARTMENT,
July 18, 1854.

Sir:—The present will supercede the directions heretofore given, as to the amount of public money in your hands, which you have been required to deposit to the credit of the Treasurer of the United States.

Should your weekly receipts exceed \$10,000, you will deposit to the credit of Treasurer, with the depository indicated, the whole amount in your hands at the close of each week.

Should your weekly receipts be less than \$10,000, but more than \$5000, you will deposit to the credit of the Treasurer the whole amount in your hands at the close of each period of two weeks.

Should your monthly receipts be more than \$2000, and less than \$20,000, you will deposit to the credit of the Treasurer at the close of each month.

Should your monthly receipts be less than \$2000, you will deposit to the credit of the Treasurer at the close of each quarter.

The compensation prescribed by the instructions of 17th May, 1845, for making deposits has been directed to be changed, so as to allow mileage when the journey is actually performed by the Receiver for the purpose of making the deposit, together with freight or transportation, and the cost of guard, when actually required. No allowance will be recognized hereafter for the labor of any Receiver in making deposits, nor on account of any risk therein.

Very respectfully,

Your obedient servant,

(Signed) JAMES GUTHRIE,
Secretary of the Treasury.

No. 378.

Circular to Certain Collectors of Customs and Receivers of Public Money.

TREASURY OF THE UNITED STATES,
August 31, 1854.

For the sole purpose of assisting to get into the Treasury of the United States, without risk or cost of transportation, the gross revenue derived from customs and sales of public lands collected at offices which are not contiguous to an Assistant Treasurer or a designated depository, the Treasurer takes advantage of such opportunities as may occur, for drawing directly on a Collector or Receiver in favor either of himself, as a disbursing agent, or of other parties; and when the drafts are returned to him properly endorsed, so that, with them as vouchers, he can obtain credit for paying the warrants on which they were issued, he causes credit to be given by covering warrants to the Collector or Receiver so paying and re-

turning his drafts. By this operation the money is got into the Treasury as effectually as if it had been deposited in a depository.

In order to effect the object explained above, certain Collectors and Receivers are required to render to this Office and to the Secretary of the Treasury, monthly statements of the money collected or received by them, to the credit of the United States on one side, and of the sums they may deposit or the drafts they may pay, or both, as debits on the other side. These statements must show the previous balance, when there is any, and the transactions of their respective months, with the balance at their close. They must be made out and remitted by the first mail of the succeeding month; and any neglect or want of promptness in this particular will be noticed by the Department.

Deposits must be charged in these statements under the dates of the certificates of deposit, which certificates should be sent with the regular accounts to the proper Auditors, but not with these statements. The accounts current and vouchers required to be sent to the accounting officers, though relating to the same subject, are, practically, different or distinct from the statements here referred to, and must not be confounded with them.

Drafts must be properly endorsed, charged by number of draft and warrant, and enclosed to the *Treasurer*, with the returns in which they are charged, that they may be promptly passed to the credit of the payers. Should any errors occur in striking balances, they must be corrected by special entries, not by altering a balance previously reported.

For the purpose of keeping separate the transactions under different bonds, they may be entered separately on the monthly statements and aggregated at foot. The balances under old bonds should be cleared off, as soon as practicable, by the charges; and, for this purpose, it may be necessary, as it is generally the most convenient mode, to deposit them specifically, though in many cases of small amounts, we may effect the object by drafts.

The returns or statements must be fairly endorsed, with the name of the office, the month to which they refer, and the name of the officer; and they should be made on common-sized letter paper, folded in three folds. Formal letters, which merely announce the enclosure of returns, are unnecessary.

Very respectfully,

SAMUEL CASEY,

Treasurer United States.

No. 379.

Circular.

TREASURY OF THE UNITED STATES,
February 1, 1854.

Sir:—For the sake of our convenience, and to ensure accuracy in making the entries on our books, which confirm credits for the payment of Treasurer's Drafts, I have to request that, hereafter, you will distinguish the drafts which you may charge and enclose in your returns to this Office, in accordance with the warrants upon which they were issued, after the following form :

Date of Payment.	No. of Draft.	No. of Warrant.	Character of Warrant.	Amount of Draft.
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1854, Feb. 1.	Dft No.	War't No.	FOR EXAMPLE. T. for Treasury proper; T. C. for Treasury Customs. T. I. for Treasury Interior. P. D. for Treasury Redemption of Debt. Q. S. for Treasury Quarterly Salaries. I. D. for Interior Department. W. for War Department. N. for Navy Department.	\$
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The number in the left hand corner is the number of the draft. The second, third, fourth, and fifth designations are printed on the drafts in red ink.

Very respectfully,

SAMUEL CASEY,

Treasurer of United States.

To —.

No. 380.

Circular.

GENERAL LAND OFFICE,
January 24, 1856.

Gentlemen :—The attention of this Office having been called to the fact, that some of the district land officers, without authority, close their offices for the purpose of bringing up arrears of work, thus causing great inconvenience and expense to persons visiting the offices for the purpose of entering lands, it becomes necessary to establish some regulation on this subject.

It is, therefore, hereby directed, that in future when the press of business at any one land office shall make such proceeding necessary, the hours for business will be limited from 8 A. M., to 12 M., at which last hour the offices will be closed for the day, and the afternoon devoted to bringing up the morning work; and whenever it shall be necessary to restrict the hours as above, the fact will be immediately reported to this Office, and the probable time such limited working hours continued, also communicated. So soon as the press of business is overcome, the office hours will be extended throughout the day; and in no case whatever, will the unauthorized closing of land offices be tolerated.

You will acknowledge the receipt hereof.

Very respectfully,

THOS. A. HENDRICKS, Commissioner.

—, Register and Receiver.

No. 381.

GENERAL LAND OFFICE,
January 26, 1856.

Gentlemen :—As inquiry has been made in regard to the amount of commissions to which Registers and Receivers of Land Offices are entitled on the value of Land Warrants issued and located under the Act of the 3d March, 1855, I have to state, as the *decision of the Department*, that Re-

gisters and Receivers are entitled to no greater compensation for their services, in any one official year, than \$500 as salary, and \$2500 as commissions.*

Any sum they may receive as fees for locating Land Warrants, over and above the amount sufficient to entitle them to the maximum commissions above mentioned for all services incident to their offices, they are required to deposit to the credit of the Treasurer of the United States. This restriction as to the maximum compensation applies to services under all other acts of Congress.

You will make an entry of this decision accordingly on your records, and immediately acknowledge the receipt of it.

Very respectfully, your obedient servant,

THOS. A. HENDRICKS,
Commissioner.

_____, Register and Receiver.

No. 382.

Circular.

GENERAL LAND OFFICE,
February 4, 1856.

Gentlemen:—The neglect of many of the district land officers to add up the columns in their respective returns made to this Office, is the cause of great delay in the transaction of its current business, and I have to enjoin upon you the necessity of *promptly* transmitting, at the end of each *month* and *quarter*, all returns which become due, with the columns *properly added up in every case*. Neglect of this duty in future cannot be permitted, and it is therefore, expected that this regulation will be strictly observed.

Very respectfully,

THOS. A. HENDRICKS, ♦
Commissioner.

_____, Register and Receiver.

No. 383.

Circular to Registers and Receivers in relation to Land Warrant locations, and Fees received for the same.

GENERAL LAND OFFICE,
April 21, 1856.

Gentlemen:—In the Circulars from this Office, dated April 2, and September 14, 1852, (No. 374,) Receivers of Public Moneys were directed to credit the United States in their accounts to be rendered to this Office as "Disbursing Agents," with amount of fees received by both Registers and Receivers for locating Military Bounty Land Warrants issued under the several acts of Congress, and to debit the amount of commissions to which they were entitled on the value of the lands located with warrants—restricting, as required by law, the maximum commissions of each to \$2500.

Further. In the circular of January 26, 1856, (No. 381,) Registers and Receivers were instructed that this restriction applied to warrants issued under the Act of 3d March, 1855, as well as all former acts.

* The Act of 2d February, 1859, (No. 348,) restricts the aggregate amount allowed, to \$2500.—See also No. 383.

In justice to Receivers, whose duty it is made to account for all fees received by the Registers as well as those received by themselves, and to avoid embarrassments hereafter, you are directed to be governed by the following regulations :

1st. Whenever application is made to locate a Land Warrant, the Register's and Receiver's fees are to be paid into the hands of the *Receiver*, who will give the applicant a receipt for the amount paid, which receipt, as evidence that the fees have been duly paid, will be shown by him to the Register, who will then issue a certificate of location, and make an entry of the location in the books of his office.

2d. It is required of the Receiver to prepare, and forward to this Office at the end of each *month* with his monthly account current, a "*fee statement*," showing the quantity of lands located with warrants issued under the several acts of Congress, and the amount of Register's and Receiver's fees he has received for the same, (see form herewith ;) and, at the end of each quarter, he will credit the United States in his account to be rendered as "*Disbursing Agent*"* to this Office, with the full amount of fees received on account of the Register and Receiver during the quarter—distinctly stating the quantity located with the warrants issued under each act, and the amount of fees he has received thereon.

3d. Whenever the amount of fees received by the Receiver, added to the commissions to which the Register and Receiver are entitled on account of "land sold," shall reach the maximum of \$2500 allowed by law, it is the duty of the Receiver promptly to report the fact to this Office ; and the excess of fees received by him over and above an amount sufficient to make the Register's and Receiver's maximum for their official year, respectively, he will safely keep in his possession until he is instructed in regard to the same.

I am, very respectfully,

Your obedient servant,

THOS. A. HENDRICKS,
Commissioner.

Fee-Statement,

Showing the quantity of lands located with Military Bounty Land Warrants, issued under the following acts of Congress, at the Land Office at ———, during the month of ———, 185— ; also the amount of Register's and Receiver's fees received for locating the same :

	QUANTITY ACTUALLY LOCATED.		FEES RECEIVED.			
			FOR THE REGISTER.		FOR THE RECEIVER.	
	Acres.		Dollars.		Dollars.	
Under act of 1847.....						
“ “ 1850.....						
“ “ 1852.....						
“ “ 1855.....						

RECEIVER'S OFFICE at ———, 185 .

I certify that the foregoing is a correct statement of the quantity of lands

* See No. 386.

located with Military Bounty Land Warrants at this office, and of the amount of Register's and Receiver's fees received by me during the month.
 ———, Receiver.

REGISTER'S OFFICE at ———, 185 .

I certify that I have carefully examined the foregoing Fee-Statement of the Receiver, and find the same to be correct.

———, Register.

No. 384.

Circular to the Officers of the Interior Department.

DEPARTMENT OF THE INTERIOR,
 Washington City, January 23, 1856.

A practice seems to be rapidly obtaining amongst the officers of the Federal Government of absenting themselves from their respective posts of duty, which threatens to become a serious evil. Its impropriety, and incompatibility with the various interests entrusted to or devolved upon them, is manifest, and its discontinuance imperatively demanded.

The officers of this Department are, therefore, hereby informed, that their constant attention to their respective duties is expected and required; and that, hereafter, any unauthorized absence from their posts will be deemed sufficient cause of removal.

When leave of absence is desired for any purpose, timely application therefor should be transmitted to the Department, and it will be granted or withheld, as may seem just and proper; but in the mean time, *and until the answer of the Department is received*, the officer making the application will remain in the proper discharge of his official duties.

As those applications, however, are frequently made by officers on the ground that the public interests committed to them require their presence at the seat of government, the Department takes this occasion to say, that, in its opinion, such necessity can rarely if ever exist: the mail facilities of the United States being sufficient for all practical purposes of official intercourse.

———, Secretary

No. 385.

Circular.

GENERAL LAND OFFICE,
 June 7, 1857.

Gentlemen:—In order to secure a regular system and facilitate the business of the Department, you are hereby instructed to observe the following regulations respecting *all* your monthly and quarterly returns:—

1. The monthly returns, fee statements, &c., of both officers, and the quarterly accounts of the Receiver and Disbursing Agent, must be mailed *within three days* succeeding the close of each month and quarter.

2. Instead of the first day of the last month in each quarter, as heretofore directed by Circular of 13th June, 1849, Receivers will, in the course of the first month of each quarter, and as soon as possible, forward the

required estimate of expenses for the quarter, that a draft for the amount may be remitted in time to enable a prompt and strict compliance with the above requirements.

Very respectfully, your obedient servant,

THOS. A. HENDRICKS, Commissioner.

Register and Receiver, Land Office at ———.

No. 386.

Circular to Registers and Receivers in relation to Land Warrant Locations and fees received for the same.

GENERAL LAND OFFICE,
April 27, 1857.

Gentlemen:—The First Comptroller of the Treasury, who by law is charged with the revision of the accounts of Receivers and Disbursing Agents, and is the controlling officer, has rendered a decision that the fees for the location of land warrants shall be accounted for by the Receiver in his accounts rendered as “Receiver,” and not as “Disbursing Agent.”

Therefore you are hereby directed to consider the Circular of April 21, 1856, (No. 383,) modified in this respect accordingly; and the following course of proceeding is ordered:—

1. All fees to which the Register and Receiver are entitled for locating land warrants, must be received by the Receiver as required by the said circular; and, at the end of each month and quarter, the *Receiver, as such*, will *credit* the United States with the amount of fees received during these periods in his monthly and quarterly accounts respectively, as follows:—

Proceeds from M. B. Land location fees on ——— acres, act 1847, \$
“ “ “ “ 1850,
“ “ “ “ 1852,
“ “ “ “ 1855,

\$

And with his monthly account he will forward also the fee statement as now required.

2. The amount of commissions to which the Register and Receiver may be entitled on the value of lands located with warrants, will be *debited* by the Receiver in his *Disbursing Agent's* account as directed in the third clause of the Circular of April 21, 1856; taking care that the amount of commissions on land warrant locations, when added to commissions on “lands sold,” do not exceed, in the aggregate, the maximum of \$2500 for any one official year, from the date of their respective commissions.

3. The Receiver is directed in all cases to forward to this Office, with the “Disbursing Agent's account” for each quarter, separate and distinct vouchers for the amount of commissions paid to the Register on purchase-money for lands sold, and on the value of lands located with warrants.

I am, very respectfully,

Your obedient servant,

THOS. A. HENDRICKS, Commissioner.

No. 387.

Copy of Circular issued to Receivers of Public Moneys.

TREASURY DEPARTMENT,
March 12, 1859.

Sir:—Being informed from the General Land Office that some of the Receivers have claimed the right of making, at the close of every quarter, deposits to the credit of the Treasurer, of whatever balances then in their hands, however small in amount, and charging mileage for making such deposits, I have now to instruct the Receivers of Public Money, that such evidently is not the intention of the Circular of 18th July, 1854, (No. 377,) and that whenever the balance at the close of any quarter, does not exceed \$2000 in the hands of any Receiver, he will at once report such balance to the Commissioner of the General Land Office and to this Department, for specific directions. Whenever the balance exceeds \$2000 at the close of any quarter, the whole should be deposited to the credit of the Treasurer.

I am very respectfully,
(Signed) HOWELL COBB,
Secretary of the Treasury.

NO. 388.

Circular Instructions to Receivers of Public Money.

TREASURY DEPARTMENT,
May 10, 1859.

Sir:—By a letter from the Secretary of the Interior, it appears to have occasionally occurred that requisitions from that Department upon the Treasury in favor of a Receiver of Public Money as disbursing agent, having been complied with by the Treasurer's draft on some depository, in consequence of that officer not finding sufficient money to pay the same reported to him by such Receiver, when the draft has reached the Receiver, he has collected the amount from the depository; though, at the time, he held sufficient money to pay the amount of such draft.

Obvious inconveniences arise from this course, and to prevent them, any Receiver having, as disbursing agent, the draft of the Treasurer on any other officer, at any time when such Receiver holds sufficient money of the United States to pay the same, he will at once pay such draft out of such money and endorse the fact that he has so paid it, as Receiver, to himself as disbursing agent, upon the draft, and to transmit it without delay to the Treasurer of the United States, as pointed out in his Circular of the 31st August, 1854. Upon the receipt of the draft so paid and endorsed, the Treasurer will at once cause the proper credit to be given to such Receiver for the payment of the draft; the fact that it was originally drawn upon another officer not being material in regard to such credit.

By the reports from the Department of the Interior, it may be inferred that, in some instances, the inconveniences referred to have arisen from the neglect of Receivers in strictly complying with their standing instructions, which require from every Receiver of public money, at the close of each month, triplicate returns of the money received on account of the Treasury of the United States, including all fees received for locating military bounty land warrants, as well as of the moneys paid, either on the Treasurer's drafts or by deposits made to the credit of the Treasurer under

instructions, without any deduction on account of balances which may be claimed by such Receiver, as disbursing agent, which by law, are to be otherwise provided for. One of these returns is required to be sent to the Secretary of the Treasury, another to the Commissioner of the General Land Office, and the other to the Treasurer of the United States; with the latter, are to be enclosed all the drafts of the Treasurer paid during such month.

These returns must clearly exhibit the actual balance, subject to draft or deposit, in the hands of the Receiver, and if punctually mailed to these several officers, will in most cases, enable drafts to be so placed as to obviate the questions which have occasionally arisen in regard to charges made for collecting the Treasurer's drafts on depositories.

The rule of this Department respecting such charges has always been, that when any disbursing officer of this Department shall receive a draft from the Treasurer which he cannot convert into specie, at par, without expense, he must at once return the draft to the Treasurer with an official report of the facts; upon which, either the draft will be made payable at some more available point, or authority given to incur the necessary expense of its collection, as circumstances may justify. In no case whatever does the Secretary of the Treasury recognize any charges for the expense of collecting the Treasurer's drafts, unless such expense has been previously authorized upon an official report showing its necessity; it being presumed by this Department, unless the contrary is clearly shown beforehand, that the Treasurer's drafts are at least equal to specie in every part of the United States.

HOWELL COBB,
Secretary of the Treasury.

To the Receiver of Public Money at ———.

OPINION OF ATTORNEY-GENERAL.

No. 389.

Purchase of public lands by Registers or Receivers; Registers by express terms of statute, and Receivers by legal construction, may purchase public lands at private entry. But neither Registers nor Receivers can purchase such lands by pre-emption within their respective districts.

ATTORNEY-GENERAL'S OFFICE,
March 7, 1856.

Sir:—Your communication of the 25th of October presents two questions, namely:—

1. Has the Receiver in any of the local land offices the right to purchase, at his own office, land which has been offered at public sale, and thus become subject to private entry at a statute price?

2. Has such receiver the right to purchase by pre-emption within his district?

It is admitted that the Register may purchase lands subject to private entry in virtue of the provisions of the Act of May 10th, 1800, through the intervention of the Surveyor-General; (2 Statutes at Large, p. 77. See No. 2,) as to *general* purchase by Receivers, that question, upon existing statutes, seems to require to be considered as *res judicata*. The opinion

of Mr. Attorney General Nelson in support of the right, has been received from that day to this, as the rule of law for the action of the Land Office. (Opinion August 12th, 1843.)

In the case of the *United States v. Boyd*, 5 Howard, 30, 49, the Supreme Court spoke of some of the inconveniences of this doctrine, but they did not proceed to pronounce it contrary to law. I think, therefore, that if the established administrative rule on the subject does not work well, it is a matter for the legislative interposition of Congress.

As to pre-emption purchase by either Receivers or Registers, although not expressly forbidden by statute, still it appears to me inadmissible by the general principles of law and of statutory construction.

By the general law, all pre-emption claims must be adjudicated, in the first instance, by the Register and Receiver. See Act of September 4, 1841, sec. 12; 5 Stat. at Large, p. 546. (No. 48.) There is no statute which provides a substitute for either of them in a case of purchase made by himself. It is clear that, by the rules of law and of right, neither of them can be the judge in his own case. *Michaud v. Girod*, 4 Howard, 503; 553.

Of course he cannot make proof of pre-emption. If he possess any right of pre-emption, it must remain in abeyance until means of adjudication be provided by Congress.

I have the honor to be, very respectfully,

C. CUSHING.

Hon. Robert M'Clelland,
Secretary of the Interior.

DECISIONS.

No. 390.

Registers are not authorized to permit their Clerks to sign certificates for them.

DEPARTMENT OF THE INTERIOR,
November 5, 1850.

I will thank you to call upon the Register (G. Bay, Wis.) for an explanation whether his correspondence with the Department, and his certificates of purchase, and other returns, have been signed by himself or by his clerk for him, and if the latter, why; and upon the Receiver, also, to know why this neglect of duty on the part of the Register was not communicated to your office. * * In the mean time, the issuance of the patents on the certificates of purchase in question should be suspended.

Very, &c.,

T. EWING, Secretary.

No. 391.

The law requiring the removal of Land Officers, for charging illegal fees, is imperative.

DEPARTMENT OF THE INTERIOR,
October 15, 1855.

The sense of Congress in regard to the penalty which should attach to the charging or receiving illegal fees, is distinctly indicated in the 6th

section of the Act of July 17, 1854, (No. 244,) which declares that "all officers, so offending, shall be forthwith removed from office." This provision, I am officially informed, was inserted in that act, at the instance of the late Commissioner of the General Land Office, and was designed to apply to all officers connected with the public lands. The law, therefore, as intended and construed by the General Land Office, would seem to be strictly imperative, and leave no discretion to the President in the premises. With the above fact stated, and the law before you, you will admit that it would not be proper to restore Mr. L.

Respectfully yours, &c.,

R. M'CLELLAND, Secretary.

Hon. E. S. Shorter, Newton, Ala.

No. 392.

It is the duty of the Register to enter Swamp Land selections on the Tract books. When practicable, the Register and Receiver should both be present at the time testimony in pre-emption cases is taken.

DEPARTMENT OF THE INTERIOR,
September 6, 1856.

Your letter of the 5th instant in reply to that of the 2d instant from the Department, on the subject of the difficulties between the Register and Receiver at Tampa, Florida, has been received. In the opinion of the Department it is the duty of the Register to enter the approval of swamp land selections on his tract books. To give instructions whereby any other officer would be charged with a portion of such duty, and of consequence, the custody for the time being of the books of the Register, would be to vitiate the security under the bond of the latter for the faithful performance of his duties. In reference to the taking of pre-emption proof, although your office may have held that it is not necessary that both officers should be present at such taking, yet it is not understood that you thereby countenance the taking of such proof by one officer, without the knowledge or assent of the other.

The law requires that such proof shall be satisfactory to both officers, and where it is practicable, they ought to sit together and jointly take such proof; and when for any just cause it is taken by one only, it should always be after notice to, and with the concurrence of the other; each should have the opportunity of cross-examining the witnesses if it should be desired. It is understood that the Register claims a pre-emption upon land now reserved, and has filed before himself a declaratory statement for the same; * one of the grounds of objection by the Receiver, to the taking of testimony by the Register alone is, that according to the system of the latter, he may take and file testimony in relation to his claim without the knowledge or participation therein by the Receiver. It is also deemed proper that you should advise both officers, that harmony in the discharge of their public duties is essential to their proper execution, and if that cannot be attained the proper remedy will be the removal of one or both.

GEO. C. WHITING, Acting Secretary.

Commissioner of the General Land Office.

* See No. 389.

No. 393.

Registers and Receivers required to account for fees received from locators of land warrants.

June 23, 1857.

The question whether Registers and Receivers of the several land offices are required to account to the United States for the fees received from locators of land warrants under the general laws limiting their compensation to three thousand dollars per annum,* having been decided in the affirmative by my predecessor, upon an appeal taken to him from the action of your office, I do not feel at liberty to review that decision, nor indeed could I do so without totally disregarding a well settled rule of this Department,—the whole subject having been exhausted by the late Secretary.

J. THOMPSON, Secretary.

No. 394.

By letter of 20th February, 1858, the Secretary requested the Commissioner to report,

“1st. Whether it is his practice to allow the outgoing officer, (Register or Receiver,) compensation up to the time when his successor receipts to him for the books, papers, &c., of his office, and has there been any exceptions thereto, and if so, what?”

“2nd. In the case of a deceased officer, up to what time do you allow compensation? If to a date subsequent to his decease, upon what principle?”

To which the Commissioner replied, (on 27th February, 1858,) “That the general rule of this Office, in cases of change in the District Land Officers, is, at the present time to allow the outgoing officer to continue to act until his successor qualifies and enters upon duty. This rule, however, is only operative where the officer remains at his post to perform official duty, and has been generally observed since the passage of the Act of 3rd March, 1853.” (No. 224.)

The Commissioner then specifies numerous cases, where the books, &c., of the vacated office have been placed in charge of the remaining officer. “In the case of a deceased officer, his compensation ceases with the date of his death, but in some cases the archives are permitted to remain in charge of his family, his clerk, or other agents, to whom an allowance is made for the safe keeping thereof, at the rate of \$500 per annum, in accordance with a long established practice of the Treasury Department.”

Respectfully, &c.,

THOS. A. HENDRICKS, Commissioner.

* See Act of February 2, 1859, (No. 348.)

No. 395.

Compensation allowed to Registers and Receivers for the sale of Indian lands, must be adjusted as though no special trust as to the nett proceeds of sales had been created, and in the same manner as in ordinary sales.

DEPARTMENT OF THE INTERIOR,
Washington, May 30, 1859.

Sir:—I enclose herewith the papers which have been filed by S. S. Baxter, Esq., Attorney for Messrs. Whitfield and Woodson, Register and Receiver at Kickapoo, Kansas, asking a review by me of the question of compensation, involved: with your report of the 4th October last, and my reply of the 1st February following.

As there is no appeal to me from your action or proposed action, in proceeding with the adjustment of the accounts of those officers, I shall not decide as to the specific facts and details in the case.

On a review of the act of Congress regulating the compensation of Registers and Receivers, and limiting the allowances and payments to officers or other persons whose pay or emoluments are fixed by law, and in view of the provisions of the treaties of 1854, with the Ioway and Delaware tribes of Indians, I am of the opinion that the compensation which can be allowed the Register and Receiver at Doniphan, for services in the sale of lands pursuant to those treaties, must be adjusted as though no special trust in regard to the net proceeds of those sales had been created by the treaties, and in the same manner and with the same limitations, as though the sales had been made in the ordinary course of business under the land laws.

The receipts from sales at Iowa Point, and Osawkee, are within, and of the compensation year of the officers, which was running at the times of the sales.

As these lands, sold on Indian account, were the first sold after the dates of the commissions and bonds of the officers, and as one per cent. on the amount received exceeds the yearly maximum of \$2500, allowable as commissions in their first year, I think that said sum of \$2500 may be charged to and paid out of the funds held by the United States under the treaties; say one per cent., but not to exceed \$1250, from the funds arising from sales under the treaty with the Ioways, and the balance or remaining half, from money received from sales under the treaty with the Delawares.

As the officers received instructions from you, under date of the 15th May, to make those sales, and as they had both executed their bonds before that date, I am of the opinion that their salaries should be allowed from the date of these instructions.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

TITLE II.

Disposal of Public Lands at Public and Private Sale.

No. 396.

The method of dividing, and the mode of selling the Public Lands given.

DEPARTMENT OF THE INTERIOR,
September 10, 1849.

Sir:—The President of the United States has referred to this department for reply, your communication of the 27th of July last, with the accompanying report.

The Congress of the United States has enacted no general law authorizing the donation or granting of the public lands; but it may be said to

Whether a title to a tract of public land has passed from the United States, is a question depending upon statutes enacted by Congress. After title has passed, it becomes subject to the laws of the State in which it lies.—*Wilcox v. Jackson*, 13 Peters, 498, 13 Condensed Reports, 266.

Under the powers of Congress to *dispose of* the public lands, the same may be leased.—*United States v. Gratiot*, 14 Peters, 526, 13 C. R. 644.

If the proceedings on which the patent was founded were irregular, the government, but not one having no prior equity, can take advantage thereof.—*Hoofnagle v. Anderson*, 7 Wheaton, 212; 5 C. R. 248.

A mere right to enter on certain lands for military services, no particular land having been appropriated, is not such a prior equity as would enable its holder to set aside a patent regular on its face.—*Ib.*

Authority "to enter" a certain quantity of land, does not authorize a location on lands previously appropriated, or withdrawn from market.—*Chotard v. Pope*, 12 Wheaton, 586; 7 C. R. 376.

Congress has exclusive power to make and authorize appropriations of the public lands.—*United States v. Fitzgerald*, 15 Peters, 407; 14 C. R. 128.

Congress has the sole power to declare the effect and dignity of titles emanating from the United States.—*Bagnell v. Broderick*, 13 Peters, 436; 13 C. R. 235.

At a sale of public lands in a Territory, an agent who purchased for another must account, as trustee, to his employer, although the statutes of the Territory have abolished all resulting trusts. It promotes the public sales, that agents should be allowed to attend and purchase under the usual responsibility of agents or trustees. The control, enjoyment and disposal by the United States, of their own property, is independent of the locality of such property, whether it be situated in a State or Territory; nor are the contracts of the government, with respect to subjects within its constitutional competency, local or confined in their effects and operation, to the sites of the subjects to which they relate. Although a certificate may be the subject of bargain and sale, yet the United States can take care that the conveyance shall be made to him who is in good faith their vendee. Although the officers of the land department may in practice and as a rule of convenience, have received the certificate of purchase as evidence of title, yet neither that practice, nor the certificate itself, can control the power either of the United States, or of this court, to ad-

have placed their acquisition within the reach of all enterprising and industrious persons, by the liberal terms it has established for the sale of the same.

The public lands are sold by legal subdivisions, and may be bought in tracts of 40, 80, 160, 320 or 640 acres each, or in as large bodies as can be found vacant, at \$1.25 per acre, payable in specie. The general law requires the price to be paid in cash at the time of the sale; but by the operation of a pre-emption law, enacted in 1841, actual settlers on the public lands, (provided they take 160 acres,) are allowed a credit of twelve months, and in some cases a longer period.

The public lands are first surveyed into townships of six miles square; these townships are subdivided into thirty-six sections, of 640 acres each;

judge or to confirm the title to the land to the true owner.—*Irvine v. Marshall*, 20 Howard, 633.

Where a lot of land offered at auction at a public sale of land was struck off to A., who advanced the money, and took a receipt therefor, and B. on the same day offered evidence to prove that he nodded to the auctioneer, and that his nod was equivalent to a bid for said land above that of A., and that thereupon the land officers put up the land again on a subsequent day, and struck off the same to C. who conveyed it to B., who disputes A.'s title: Held, that if B. intended his nod at the first sale to be a bid above A., he should have promptly disclosed it at the time, and invoked the land officers to remedy the inobservance or neglect of the auctioneer; and that, as this was not done, the patent must issue to A., to whom it was struck off at the first sale.—(Opinion of Attorney-General, April 10, 1839, vol. 3, p. 448.)

The great fundamental principle of our land sales is, that private entries shall never be permitted until after proclamation is made that the lands are in market.—(Opinion, March 29, 1843, vol. 4, p. 167.)

The several acts of Congress relating to the saline and mineral lands confer a general authority upon the President to lease the lead mines.—(Opinion, Oct. 14, 1842, vol. 4, p. 93.)

The President has unrestricted power to lease the lead mines, on such conditions as he may think proper, for any term not exceeding three years, providing the leases be not inconsistent with existing laws.—(Opinion, Jan. 1823, vol. 1, p. 593.)

There is no material difference between the two acts concerning the lead mines, only that leases under the one are limited to three, and under the other to five years.—(Opinion, April 3, 1835, vol. 2, p. 708.)

The powers to lease the mines necessarily includes the power to collect rents, and to take all proper measures to effect that object.—*Id.*

Proceedings may be taken under the 1st section of the Act of 2d of March, 1831, against any person who shall have cut and removed any ship timber from lands acquired by the United States.—(Opinion, June 9, 1832, vol. 2, p. 524.)

The President may employ such military force as he may judge necessary and proper to remove persons who may intrude upon any lands ceded or secured to the United States by any treaty made with a foreign nation, or by a cession from any individual State; and hence may adopt that method in respect to the lands in question.—(Opinion, Aug. 22, 1833, vol. 2, p. 575.)

The President of the United States has lawful authority summarily to remove intruders from lands duly held by the government for the site of a light-house, or for any other competent purpose.—(Opinion, Sept. 21, 1855, vol. 7, p. 534.)

Lands containing iron ore merely, are not to be considered as "mineral lands," within the meaning of the Act of 1st March, 1847; but they are to be disposed of according to the laws in relation to the disposition of other public lands.—(Opinion, Aug. 28, 1850, vol. 5, p. 247.)

Private entries are not in order, until the land shall have been proclaimed to be, and shall have been properly put in market. Lands which have never been in commerce at all cannot be treated, at the end of the term designated in the treaty

and these sections into half sections, quarter sections, eighths of sections, and sixteenths of sections.

They are then, after due notice, exposed at public sale to the highest bidder. When thus exposed at public sale and not disposed of, they become subject to private entry, at the minimum price of \$1.25 per acre.

A person desirous of obtaining, under the pre-emption law before alluded to, a tract of 160 acres of land, should settle upon the same, build thereon a house, and proceed to cultivate, and otherwise in good faith to make it the home and residence of himself and family. Within thirty days from the date of his settlement on the land, he is required to file with the land officers for the district in which such tract may be situated, a declaration in writing, setting forth that he is a citizen of the United States, or if an

with the Indians, as lands for which nobody would bid.—(Opinion, March 29, 1843, vol. 4, p. 167.)

It is the duty of the executive to secure to all persons a fair and equal opportunity of purchasing the public lands.—(Opinion, July 14, 1837, vol. 3, p. 274.)

Lands that have been temporarily withheld from private sale, should not be allowed to be entered, until suitable notice has been given of the removal of the cause of suspension.—*Id.*

The Treasury Department has no authority to require a certificate that notice has been given, or that lands are liable to entry; nor can the treasurer refuse pay for a specific tract, unless he have official evidence that it is not subject to sale.—*Id.*

The regulation, established by the Commissioner of the General Land Office, requiring holders of land warrants to make affidavit, that there is no settlement on the land intended to be located, is inconsistent with the Act of 11th February, 1847, and void.—(Opinion, August 7, 1852, vol. 5, p. 609.)

Where a settler upon certain lands on the east bank of the Mississippi river, which, when subsequently surveyed, was designated as the southwest fractional quarter of section twenty-five, failed to make payment therefor prior to the day appointed for the public sale of lands in that vicinity, and by his agent, on that day, refused to enter and pay for the same, unless he could be permitted also to enter the southeast fractional quarter section; and not being gratified in that respect, (the land officers refusing his request, and offering all the lands at public sale, and actually selling the southeast fractional quarter, and afterwards obtaining a confirmation of their proceedings,) by his agent having applied to the Secretary of the Treasury for a hearing, in respect to his claim of pre-emption: Held, that he abandoned his claim by refusing to make payment, unless he could be permitted to enter the southeast fractional quarter section, and that by such refusal he forfeited all right, which he had previously acquired to the premises.—(Opinion, October 27, 1837, vol. 4, p. 637.)

Under the laws of the United States, aliens are entitled to purchase the public lands, subject only, as to their tenure, to such limitations as particular States may enact; with this exception however, that pre-emptions are secured to aliens who have declared their intentions to become naturalized according to law, and to citizens, whether native born or naturalized, and none others.—(Opinion, July 28, 1855, vol. 7, p. 351.)

The same distinction is maintained in the graduation acts, with the further condition, that the limited quantity of land, purchasable by any person at the reduced prices, can be purchased only for personal use, and for actual settlement and cultivation.—*Id.*

Where a section of public land was included with other lands in the President's proclamation for sale, and the sale took place, but the section in question was not sold, the presumption is, that such section was cried by the auctioneer; and an applicant to enter the same at private sale, need not be required by the Register to prove that it was actually cried in the hearing of the bidders.—(Opinion, November 29, 1851, vol. 5, p. 476.)

An application for the purchase of land was rejected by the Register, and the applicant then tendered the purchase-money to the Treasurer of the United States, who refused to receive it. Held, that the neglect of the applicant to appeal to the

alien, that he has filed a declaration of intention to become a citizen, and that he has settled upon a certain tract of land, (describing the same,) and intends to purchase it under the said pre-emption law.

At the expiration of twelve months from the date of his settlement, he is required to appear at the land office of his district, and make proof of his settlement, cultivation, &c., and payment for the land. After these requirements have been complied with, he receives from the government of the United States a patent or deed in fee simple, for the land thus settled upon and paid for.

Where lands have been surveyed but not exposed to public sale in the manner herein described, they can be obtained under the same pre-emption law at \$1.25 per acre, but proof of a compliance with the law, and

General Land Office, was not an abandonment of his application. *Lytle v. Arkansas*, 9 How. 328.—(Opinion, November 29, 1851; vol. 5, p. 476.)

The question, whether there has been a dedication of a section of land to the city of Cincinnati, is not for the executive department to decide. That, and all other questions of conflicting claims and boundaries, will be open to the proper courts of justice after the patent shall have been issued.—*Cincinnati v. White's Lessees*, 6 Pet. 431.

The President has no authority, under the Constitution, to dispose of, by lease or otherwise, any portion of the public lands without authority of law; and the authority to lease mineral lands is limited by law to salt springs and lead mines, and the necessary contiguous sections.—(Opinion, April 18, 1846, vol. 4, p. 480.)

Wherefore the President is without authority to lease, or cause to be leased, lands which contain mines of copper or silver as the predominating mineral.—*Ib.*

Minors have the right to redeem their lands sold for taxes at any time within two years from the removal of the disability, by payment of the purchase-money with ten per cent. thereon, and compensation for improvements, whether deeds have been given to the purchasers or not; for no deed is valid unless given in pursuance of law, and the law does not authorize the giving of a deed until the time of redemption shall have expired.—(Opinion, July 3, 1820, vol. 1, p. 378.)

Sales of lands excepted from sale by act of Congress are void for want of authority.—(Opinion, October 22, 1828, vol. 2, p. 186.)

The decision of a court as to the invalidity of the claim causing the exception, will not correct the error.—*Ib.*

A purchaser of a tract, as to part of which there was authority to sell, and as to the other part there was not, has the option to avoid the entire contract, or to receive a patent for such part as could be sold.—*Ib.*

Lands struck off on the last day of a public sale, and not paid for, are not subject to private entry prior to being again offered at public sale. Such tracts are not unsold lands at the close of the public sales, but are to be regarded as reverted lands.—(Opinion, April 1, 1829, vol. 2, p. 200.)

Where the purchase-money is paid directly to the Treasurer, the specific tract of land must be stated the same as if applied for at the office of the land district, and the same form must be pursued.—(Opinion, October 24, 1836, vol. 3, p. 150.)

Where H. and F. applied at a land office to enter certain lands, but not being able to comply with the regulations of the department, procured them to be marked and reserved from sale, to T., who, soon thereafter, applied to purchase and pay for them, and was refused; and afterwards H. and F. made payment and obtained a certificate of purchase: Held, that the land officers should have complied with T.'s offer; and that, as a patent has not yet issued, the matter is yet under control of the General Land Office.—(Opinion, June 5, 1837, vol. 3, p. 240.)

When the purchaser of land from the United States has paid for it, and received a final certificate, it is taxable property according to the Statutes of Michigan, although a patent has not yet been issued. Taxation upon land so held, is not a violation of the ordinance of 1787, as an "interference with the primary disposition

payment, are not required until the day fixed upon for the public sale to take place.

This may be a few weeks or several *years* after the settlement, and hence the period of the credit on such lands is uncertain.

The laws to which allusion is here made are general, and apply to all the States of the Union in which the government of the United States owns lands.

Should it be in my power at any future time to afford you further information on the subject, it will give me pleasure to do so.

Very, &c.,

T. EWING, Secretary.

Henri Dublancy Taborde,
St. Pierre, Island of Martinique.

of the soil by Congress," nor is it a tax on the lands of the United States. The State of Michigan could rightfully impose the tax. It was competent for the State to assess and tax such lands at their full value, as the absolute property of the holder of the final certificate, and in default of payment, to sell them as if he owned them in fee. In case of controversy, a court of equity is the proper tribunal to prevent an injurious act by a public officer, for which the law might give no adequate redress, or to avoid a multiplicity of suits, or to prevent a cloud from being cast over the title.—*Carrol v. Safford*, 3 How. 441.

The Supreme Court of Missouri has decided that although the State courts cannot interfere with the primary disposition of the soil by the general government, yet if, in obtaining from the United States, the legal title to a tract of land, one be guilty of fraud, or affects himself with a trust, he shall hold the title thus acquired for the benefit of those who have been injured. A. having entered a tract of land, found B., a married woman, in possession, without the right of pre-emption, and paid her fifty dollars for her improvements, and for yielding possession to him. Afterwards, without notice to A., and with the money thus obtained, she procured a patent for the same: Held, that the right thus acquired was clothed with a trust for the benefit of A.—*Groves v. Fulsome*, 16 Mo. Repts. 543.

It was held by the Supreme Court of Missouri, that where one enters land of the United States in his own name with the money of another, and procures a patent for the same, equity will decree the title to the party to whom it belongs.—*Stephenson v. Smith*, 7 Mo. Repts. 610.

An application to a Register and a deposit of money with him, in the absence of the Receiver, can give no right in law or equity to the land applied for.—*Groom v. Hill*, 9 Mo. Repts. 320.

The receipt of a Receiver is *prima facie* evidence that the law has been complied with, but it does not stand on the same footing with a patent, and it may be shown by parol evidence to be void.—*Allison v. Hunter*, 9 Mo. Repts. 741.

A promise by a vendee to pay a person for improvements which he had made upon public lands, previous to the vendee's purchasing of the United States, is without consideration and void.—*Hulson v. Overturf*, Illinois Repts., 1 S. 170.

In Illinois, a settler upon the public lands of the United States cannot maintain trespass against a person who may enter and cut down the timber upon a portion of the legal subdivision of land upon which he is settled, but which is not actually inclosed or occupied by such settler.—*Lovett v. Noble*, *ib.*, 1 S. 185.

In Illinois, where the plaintiff has made rails from timber growing on government land and left them piled thereon, and the defendant afterwards purchased the land from the government and converted rails, to his own use: Held, that the plaintiff could maintain an action of trespass against the defendant and recover the value of the rails taken.—*Wincher v. Shrewsbury*, *ib.*, 2 S. 284; *Brown v. Throckmorton*, 11 *ib.*, 529.

CIRCULARS OF INSTRUCTION.

No. 397.

Circular to Registers and Receivers of the United States Land Offices, in relation to Public Auction land sales.

GENERAL LAND OFFICE,
July 22, 1844.

Gentlemen:—At public sale, the townships, (or promiscuous, detached tracts, as the case may be,) are to be offered in the order in which they stand in the Proclamation; and the tracts in each township (or fractional township) are to be put up to the highest bidder in the order of their numbers, beginning in each case with the lowest number of section or lot in the series, and continuing, regularly on, to the highest. The lots in each section are to be offered in the following order, viz:

East $\frac{1}{2}$ North East $\frac{1}{4}$	}	East $\frac{1}{2}$ South East $\frac{1}{4}$
West $\frac{1}{2}$ ditto.		West $\frac{1}{2}$ ditto.
East $\frac{1}{2}$ North West $\frac{1}{4}$	}	East $\frac{1}{2}$ South West $\frac{1}{4}$
West $\frac{1}{2}$ ditto.		West $\frac{1}{2}$ ditto.

In reference to the mode of conducting such sales, you are referred to the particulars contained in the printed circular letters from this Office, dated May 25th, 1831, and December 31st, 1833.

The law limits the duration of the term of sale to two weeks, but no sale is to be kept open for a longer term, (within such limitation) than is really necessary for the convenient offering of all the land; and, as a general rule, private entries of the land so offered are not to be admitted until after the expiration of the full term of two weeks, in order to give the officers abundant time to bring up the records of sale.

It is the duty of the Register, preliminary to every public sale, to open up in the *tract books* of his office, in the regular order of townships in a range, and of sections in the township, or fractional township, (leaving sixteen lines for every section, and proportional spaces for fractions,) the particular lands to be offered, so that those books may be fully prepared for operations by the day of sale. The tract books must be kept posted up as regularly as the other books of the Register's office, and the Receiver is hereby requested specially to certify to this Office, from month to month, the condition of the tract books and other books of the Register's office, in a manner as particular as the Register is required to certify the periodical condition of the Receiver's office by endorsement on the Receiver's monthly accounts current.

Where the amount of land to be offered at a public sale is such as to *require* the aid of a *public crier*, a moderate charge for his services will be allowed, but under no circumstances to exceed three dollars per day. No clerk hire at such sales will be allowed, unless it shall be satisfactorily shown that the magnitude of the duty was such as to render the services of a clerk indispensably necessary for the due dispatch of business for the convenience of purchasers.

In your respective monthly abstracts you are requested to discriminate every tract of land disposed of at public sale, by writing the words "*pub. sale*" opposite thereto, in the margin; and to discriminate pre-emption entries by writing the words "*pre-emption* act of —," opposite to the same, and after making up the aggregate amount of acres and purchase money at the foot of such abstract, you are required to form a recapitula-

tion, showing the respective amounts of acres and purchase money from auction sale, from pre-emption entries, and from ordinary private entries.

At the close of a public sale, you are required to transmit to this Office a joint letter representing the fact of your having concluded the sale, indicating the number of days which it necessarily occupied, and any important particulars connected therewith, and especially designating any land which, from any cause, may not have been offered pursuant to the proclamation, and distinctly setting forth the reason why it was not offered.

In making out your charge for superintending a public sale, you are also requested to certify that the days charged for (if more than one) were fully occupied in offering the lands and perfecting sales, and you will charge accordingly, at the rate of five dollars for each day so engaged.

This latter evidence will be forwarded from this Office to the Comptroller, on adjustment of the Receiver's quarterly account.

Annexed is a specimen of a blotter containing minutes of sale, (to be varied, of course, according to circumstances,) which should always be used by you at a public sale, and carefully preserved at your office.*

I remain, very respectfully, gentlemen, your obedient servant,

THO. H. BLAKE, Commissioner.

P. S.—Where tracts are bounded by a river, the Register is directed invariably to designate them in reference to the bank of the river on which they lie; thus, on the *right* or *left* bank of the river, *descending*; without referring to the cardinal points in such designation.

~~Re~~ In the manuscript circular in relation to school lands, bearing date May 17th, 1844, an error in the month is made, in the reference to a former circular issued from this Office in the year 1832, on the same subject. The circular therein alluded to is dated *August 30th*, 1832.

Township No. ———, Range No. ———, Monday, ——— day of ———, 184—.

Commenced the sale this day, at ——— o'clock, and during the day offered the following lands, in the mode prescribed by law.

* The twenty-sixth clause of the Circular of May 25th, 1831, which is still in force, is as follows:—

"26. Public sales are to be so conducted as to admit of offering at sale, agreeably to law, the whole quantity of land proclaimed. The utmost limit to which a sale is kept open is two weeks, of six working days each; Sabbath days of course excluded. The mode of conducting a public sale is a matter to be arranged by the Register and Receiver. The hours of commencement and termination of a sale on each day, and the quantity of land or number of tracts to be offered on each day, are not prescribed by law, and must necessarily depend on contingent circumstances. As a general rule, I would recommend that a public sale commence about *sunrise* and end about *sunset*, in all cases where bidders attend. Two or more short intervals, for necessary relaxation and refreshment, to be observed during each day of sale. I would also recommend, as a general rule, that in offering tracts, you should not dwell longer than one minute for a bid.

"The law provides that the Register and Receiver shall each receive five dollars a day for superintending public sales, but provides no allowance for either crier or clerk. It has, however, been the practice at the Treasury, to allow a reasonable per diem for the services of a crier in all cases, and also to allow a per diem for the services of a clerk to the superintendents, (to aid them in taking minutes of sale and making out receipts for purchasers,) in cases where, from the nature and magnitude of the sales, there appeared to be a *propriety* and necessity for such allowance. Of these circumstances, however, the accounting officers have always reserved to themselves the exclusive right of determining, whenever a charge is made."

- Section 1 No bids.
- " 2 No bids, except for E. $\frac{1}{2}$ N. W. $\frac{1}{4}$, sold to John Jones, at \$1 27.
W. $\frac{1}{2}$ S. E. $\frac{1}{4}$, " Wm. Abbot, at \$1 26.
- " 3 Reserved the N. W. $\frac{1}{4}$, on account of the unconfirmed claim of Thomas Hill; all the rest offered, and no bids, except for W. $\frac{1}{2}$ S. E. $\frac{1}{4}$, sold to Thomas Lewis for \$1 40; as he did not pay for the land to-day, it will be re-offered to-morrow.
- " 4 Reserved for seminary lands, per letter of G. L. O., of 14th Jan., 1842.
- " 5 E. $\frac{1}{2}$ located by State, under 8th section of Act of Sept. 4, 1841. No bids on the residue.
- " 6 N. W. $\frac{1}{4}$ Thomas Brown's pre-emption—Act of 1841.
N. E. $\frac{1}{4}$ James Evans, do. do.
E. $\frac{1}{2}$ S. W. $\frac{1}{4}$ sold to Thomas Green, at, \$1 26.

or,

if the labor at the public sale be found so great as to render it impracticable to enter into so minute an exhibit as the above, you may modify it thus,

- Section 1 Offered.
- " 2 Offered.
- " 3 N. W. $\frac{1}{4}$ reserved. See Tract Book for particulars. The rest offered.
- " 4 Reserved. See Tract Book.
- " 5 E. $\frac{1}{2}$ reserved. See Tract Book for particulars. The rest offered.
- " 6 Offered.

No. 398.

Circular.

GENERAL LAND OFFICE,
February 2, 1847.

Gentlemen:—Enquiries having been made at this Office relative to receiving Treasury Notes for lands, and restoring to the purchaser, in specie, the difference between the amount of payment to be made and the amount of the note tendered, the following rule has been established in relation thereto by the Secretary of the Treasury, and will be observed by you, to wit:

A Treasury Note of the denomination next above the amount of payment to be made, may be taken, and the difference paid to the purchaser in specie, provided the difference, or change, does not amount to fifty dollars. As, for instance, in payment for lands of a sum less than fifty dollars, a Treasury Note of fifty dollars may be taken, and the change paid to the purchaser in specie; in payment of more than fifty dollars, and less than one hundred dollars, a Treasury Note of the denomination of a hundred dollars may be taken, and the difference paid to the purchaser in specie; and so on, in other cases: but in no case can a Treasury Note be taken, and the difference paid to the purchaser in specie, where that difference, or change, amounts to fifty dollars—the lowest denomination of Treasury Notes issued.

Very respectfully, your obedient servant,

———, Acting Commissioner.

Register of the Land Office and
Receiver of Public Moneys at ———.

No. 399.

Circular.

GENERAL LAND OFFICE,
January 18, 1851.

Gentlemen :—Hereafter, the following rules will be observed by you, in bringing isolated tracts of land into market, under the 5th section of the Act of August 3d, 1846. (No. 110.)

1st. Care must be taken that your books, plats and files do not interpose any obstacle to the offering of such lands as may be reported to you by this Office for sale under said law.

2d. When instructions are received from this Office ordering such tracts to be exposed at public sale, you will cause an advertisement to be inserted *once* a week for the space of thirty days in *one* newspaper of the most general circulation in your district, using the following form of notice :

“Public Land Sale.—Notice is hereby given that in pursuance of instructions from the Commissioner of the General Land Office, under authority vested in him by the 5th section of the Act of Congress approved 3d Aug., 1846, we shall proceed to offer at public sale on the ____ day of ____ next at this Office, the following tracts of public land, to wit, ____.

“All persons having pre-emption rights to any portion of the above lands are advised to make proof thereof and payment before the day above designated for the commencement of said sale, otherwise their rights will be forfeited.

“A. B., Register,
“C. D., Receiver.”

(Date.)

The day of sale to be thirty days after the date of the notice.

3d. The sale must close immediately after offering the lands thus advertised; but should any of the lands thus offered not be purchased at the public sale, they must subsequently be regarded and treated as subject to private entry, as if offered by a Proclamation of the President.

4th. Immediately after each sale, you will send to this Office a joint report showing the lands offered, indicating the sales, the Nos. of the certificates, &c., with a copy of the advertisement under which the offering was made.

5th. When the publisher presents his account to you for advertising the sale, you will require his affidavit that the charges are correct and not exceeding the usual rates.* Upon this being furnished, accompanied with a receipt for the money, the Receiver is authorized to pay the same, and he will forward the account properly receipted, with the publisher's affidavit and your joint certificates as to the correctness of the whole, with his quarterly returns, as Disbursing Agent, and he will receive a credit for the amount thus expended, in the settlement of his accounts here.

Respectfully,

J. BUTTERFIELD,

Commissioner.

_____, Register and Receiver.

* The General Land Office now fixes the rate of compensation allowed for advertising.

DECISIONS.

No. 400.

Holders of Certificates of Entry, may assign them in the manner specified.

DEPARTMENT OF THE INTERIOR,
August 30, 1855.

In reply to your letter of the 28th inst., you are advised that holders of certificates of entry of land can assign the same, and patents will be issued to such assignees, upon the filling up of the assignments in the General Land Office, prior to the issue of the patent to the original purchaser. This does not, however, extend to entries made under the Pre-emption or Graduation Laws. In such cases, patents can be issued only to the original purchasers. The assignment may be made before the Register or Receiver of a land office, or before any officers in the State authorized to take acknowledgments of deeds.

Respectfully,
R. M'CLELLAND,
Secretary.

R. H. Folger.

No. 401.

Lands selected and abandoned, must be advertised before they become subject to private entry.

DEPARTMENT OF THE INTERIOR,
April 24, 1856.

A letter has been received at the Department, from Robert L. Winslow, appealing from your decision against his and A. B. Bowen's right to enter, in preference to any one else, certain lands in T. 27, R. 26, Menasha District, Wisconsin, selected as swamp land, but subsequently abandoned by the Governor of the State upon evidence satisfactory to him that the tracts in question were not swamp. As these tracts were not only selected but *approved* to the State, their subsequent abandonment, and upon testimony procured by the above named persons, does not place them in a different condition than if set aside by the Department in the ordinary manner, upon satisfactory evidence. His appeal was from your order, by virtue of which it would seem that on the 5th prox. the said tracts are advertised for sale, and he has this day been advised, that the appeal cannot be entertained, and that the proposed offering cannot be interfered with by any action of the Department.

R. M'CLELLAND, Secretary.

Commissioner of the General Land Office.

No. 402.

A party who was prevented by the Register from complying with the law, under given circumstances allowed a preference right.

Conflicting claims of A. H. McDowell and G. A. Williams, the former by pre-emption, the latter by entry at private sale.

DEPARTMENT OF THE INTERIOR,
August 20, 1856.

The Department, though compelled to decide against the *right of pre-emption* as claimed by Mr. McDowell, (thus affirming your action on that

point,) not only for the reason assigned, to wit: the want of personal residence of Mr. M'Dowell on the land to constitute him a pre-emptor, but also because the proof filed by him was not filed in due time, viz. twelve months after settlement; yet as the entry of Williams was made during the existence of the said twelve months, and as an entry under the graduation law of 1854, and when M'Dowell had made substantial and extensive improvements on the land, I think that M'Dowell should be permitted to enter the land, particularly as in addition to the above causes, it would appear he sought to enter the land at private sale, and was prevented by an act of the then Register, by whose advice he filed the declaration under the pre-emption law, and which the latter not only neglected to report in proper time to your office, but failed to regard its existence when Williams' entry was allowed.

R. M'CLELLAND, Secretary.

Commissioner of the General Land Office.

No. 403.

Land simultaneously applied for, cannot subsequently be located by warrant issued under Act of 1855.

GENERAL LAND OFFICE,
July 11, 1857.

Sir:—In reply to your letter of the 19th ult., referred to this Office by the Secretary of the Interior, I have to state that lands put up at public sale between two or more persons who made simultaneous application to enter or locate the same tract, are, by the act of thus offering them at public sale, withdrawn from entry at private sale, and that, consequently, a military bounty land warrant, located on such tract in part satisfaction of the purchase-money which the successful bidder agreed to pay for the tract, is located in violation of the 5th section of the Bounty Land Act of March 3, 1855, (No. 282,) which provides "that no warrant issued under the provisions of this act, shall be located on any public lands except such as shall at the time be subject to sale at either the minimum or lower graduated prices.

This Office has, however, at the urgent request of many persons who have unadvisedly made such illegal locations, consented to suspend action in all such cases until after the meeting of the next session of Congress, in order to afford an opportunity for such persons to apply to that body for relief.

Very respectfully,

Your obedient servant,

(Signed) THOS. A. HENDRICKS,
Commissioner.

W. S. Jones, Esq.,
Raymond, Mississippi.

No. 404.

Private entries may be permitted of Land claimed by a pre-emptor, subject, however, to the claim of the latter.

GENERAL LAND OFFICE,
April 8, 1858.

With reference to the action of the Register and Receiver, (at Stevens Point, Wisconsin,) in permitting the private entries Nos. 7373 and 8362,

“after receiving and filing” Joseph Polley’s declaratory statement, (covering the same land,) and “before his time for making proof and payment had expired,” I have to state that an *explanation* from the local officers was unnecessary, such action being common to all the district offices. Ever since the establishment of the pre-emption system, it has been the practice of the different local offices to permit private entries of offered lands upon which declarations had been filed,—such entries being understood by all parties to be subject to the right of the pre-emptors. In such cases, where the pre-emption claims are abandoned or impeached, the private entries hold good; or where the pre-emptions are proved up and entries approved and patented, the private entries are cancelled.

Respectfully, &c.,

THOS. A. HENDRICKS, Commissioner.

Hon. J. Thompson, Secretary of the Interior.

No. 405.

Lands once entered cannot be purchased at private sale until they are restored to market by notice. An application to purchase withdrawn land confers upon the applicant no preference right to purchase it.

DEPARTMENT OF THE INTERIOR,
June 17, 1859.

Sir:—It appears from the papers received with your letter of the 14th of April last, that Arris Cox asserts a pre-emption claim to a certain tract of land in the Augusta District, Mississippi, which is contested by Morris A. Pardue. Cox commenced a settlement upon said land in April, 1857. In October following, he was permitted to make proof and payment. This state of facts operates as a withdrawal of lands thus situated from private entry until after a publication of notice restoring them to market. But at the date of Pardue’s application, the land in contest was withdrawn from sale for railroad purposes, and no application from him for the same could have been properly received. An application to purchase lands which are withdrawn from market, will not be regarded as continuing and attaching a valid claim thereto upon restoration, but a new application would then be necessary. For two reasons, then, said Pardue has no rights as an adverse claimant.

At the time the lands in question were restored to market, and for some time prior thereto, the pre-emption claimant, Cox, appears to have been a *bona fide* settler thereon. In view of the facts of the case, said Cox is entitled to a confirmation of his entry and location under the Act of 26th of June, 1856, (No. 291,) and the same will accordingly be reported for that purpose, at your earliest convenience.

Very respectfully,

(Signed,)

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 406.

In all cases where Lands have been brought into market under the operation of the laws, they must remain subject to sale, unless it is necessary to withdraw them for the proper execution of other laws, &c.

DEPARTMENT OF THE INTERIOR,
September 3, 1859.

Sir:—I have to acknowledge the receipt of your letter of the 27th ult., relative to the petition which was presented to the President some days since, asking that the public lands in Kansas and Nebraska, be withheld, by order of the Executive, from private entry after the close of the public sales. Upon a full consideration of the proposition thus submitted, the President is of the opinion that the law has invested him with no authority to grant the request, and directs me so to inform you.

The Act of Congress upon this subject declares that "all the lands offered at such public sales and which shall remain unsold at the close thereof, shall be subject to entry at private sale, in the same manner, and at the same price with the other lands sold at private sale at the respective land offices." This law is absolute in its terms, and its provisions cannot be disregarded. In all cases where lands have been brought into market under the regular operation of the land laws, they must remain subject to sale, unless it becomes necessary to withdraw them from market for the proper execution of other laws passed by Congress. Hence sales of lands once offered have only been suspended to prevent confusion of titles, and to protect vested rights arising under law or treaties, or to secure a proper adjustment of grants actually made by Congress for railroad and other purposes. They have not been, nor can they be, withheld from sale from considerations of policy or profit merely; nor, indeed, in anticipation of future grants for purposes of improvement.

Such was the answer given, in April last, to a similar application made by certain citizens of Louisiana, and such must be the reply on the present occasion. Be pleased to inform your memorialists accordingly.

Very respectfully,

Your obedient servant,

W. F. M. Arny, Esq.,
Barnum's Hotel, St. Louis, Mo.

J. THOMPSON, Secretary.

No. 407.

Lands once entered, and the entry cancelled, cannot be again sold until after public notice, except by pre-emption.

DEPARTMENT OF THE INTERIOR,
September 28, 1859.

Sir:—The land in the Springfield District, Illinois, which G. W. Danforth claims the right to enter, as set forth in your report of the 2d instant, having been previously entered, and that entry cancelled, cannot be again entered until after thirty days notice, except by pre-emption.

Your decision, adverse to the application of said Danforth, is accordingly hereby affirmed.

Very respectfully,

J. THOMPSON, Secretary.

Joseph I. Wilson, Esq.,
Acting Commissioner of the General Land Office.

TITLE III.

Pre-emption Claims.

I. PRE-EMPTION GENERALLY.

[The policy of securing to individuals a preference right to purchase a limited quantity of the public land, which they had improved and inhabited, had its origin more than fifty years ago, and it has been gradually extended and enlarged in its application. In the country northwest of the Ohio, and above the mouth of the Kentucky River, as early as May 10, 1800, and afterwards in Michigan Territory, in Illinois Territory, in lands south of Tennessee, in the Louisiana purchase, in Florida, and in Missouri Territory, in particular cases, and on special conditions, varying in each of those localities, pre-emption rights were granted by various statutes, notwithstanding intrusions on the public lands had been prohibited by the Act of March 3rd, 1807, which was prior in date to many of the pre-emption

An entry under a settlement and pre-emption right, made in the name of "the heirs" of the pre-emption claimant, is valid, though the heirs be not named.—*Hunt v. Wickliffe*, 2 Peters, 201; 8 Condensed Reports, 85.

No reservation or appropriation of a tract of land can be made, after a citizen has acquired a right to it under a pre-emption law.—*United States v. Fitzgerald*, 15 Peters, 401; 14 C. R. 128.

The proviso, in the 5th section of the Act of March 3, 1811, excluding from the right of pre-emption back lands fit for cultivation, bordering on another river, creek, bayou or water-course," refers only to lands bordering on some navigable water, and which also are fit for cultivation.—*Surgett v. Lapice*, 8 Howard, 48; 17 C. R. 497.

Under the pre-emption Act of 1830, continued in force by that of 1832, and the instructions of the commissioner of public lands, the pre-emptor was permitted to file his proofs identifying the land in the absence of surveys: the Register and Receiver were constituted a tribunal to decide on the validity and extent of such pre-emption rights, and their decision can be impeached only by evidence of fraud.—*Lytle v. Arkansas*, 9 How. 314; 18 C. R. 154. (But see *Bernard's Heirs v. Ashley's Heirs*, 18 How. 43.)

Where the misconduct or neglect of a public officer, is the sole cause why an individual fails to obtain a title under a valid pre-emption claim, equity will relieve him.—*Ib.*

Under the acts above mentioned, the pre-emption right is limited to the fractional quarter-section on which his improvements were made, and does not extend to adjoining fractions, not exceeding one hundred and sixty acres.—*Ib.*

The Act of 15th June, 1832, granting land to the Territory of Arkansas, did not affect a pre-emption right then duly proved.—*Ib.*

The decision of the Register and Receiver of a land-office, in the absence of fraud, would be conclusive as to the facts that the applicant for the land was then in possession, and of his cultivating the land during the preceding year, because these questions are directly submitted to those officers; yet if they undertake to grant pre-emptions to land, on which the law declares they shall not be granted, then they are acting on a subject-matter clearly not within their jurisdiction; as much so as if a court whose jurisdiction was declared not to extend beyond a given sum, should

laws to which reference is made. The anomaly was thus presented by Congress, of rewarding those whom an existing law provided penalties against as trespassers, so that the policy indicated would seem to sustain the opinion, that none but trespassers could then become purchasers under the pre-emption laws.

By the Act of 29th May, 1830, pre-emption rights were granted to "every settler or occupant of the public lands," who was in possession at the date of that law, and had cultivated any portion of the land not exceeding one hundred and sixty acres. This law was limited to one year, but by the subsequent acts, approved July 14, 1832, March 2, 1833, June 19, 1834, June 22, 1838, and June 1, 1840, pre-emption privileges were extended to a later date, and to a larger class of persons.

But as these laws had principally a retrospective bearing, and were

attempt cognizance of a case beyond that sum.—*Wilcox v. Jackson*, 13 Pet. 498 ; 13 C. R. 266.

Appropriation of land by the government, is nothing more or less than setting it apart for some particular use. In the case before the court there has been an appropriation of the land, not only in fact but in law.—*Ib.*

By the act of Congress of 1830, all lands are exempted from pre-emption which are reserved from sale by order of the President of the United States. The President speaks and acts through the heads of the several Departments, in relation to subjects which appertain to their respective duties. A reservation of lands, made at the request of the Secretary of War, for purposes in his Department, must be considered as made by the President of the United States within the terms of the act of Congress.—*Ib.*

Whensoever a tract of land shall have once been legally appropriated to any purpose, from that moment the land thus appropriated becomes severed from the mass of public lands ; and no subsequent law or proclamation, or sale, would be construed to embrace it, or to operate upon it ; although no other reservation were made of it.—*Ib.*

The right of pre-emption was a bounty extended to settlers and occupants of the public domain. This bounty, it cannot be supposed, was designed to be extended to the sacrifice of public establishments, or of great public interests.—*Ib.*

Nothing passes a perfect title to public lands with the exception of a few cases, but a patent. The exceptions are, where Congress grants lands in words of present grant. The general rule applies as well to pre-emptions as to other purchases of public lands.—*Ib.*

The Act of the Legislature of Illinois, giving a right to the holder of a Register's certificate of the entry of public lands, to recover possession of such lands in an action of ejectment, does not apply to cases where a paramount title is in the hands of the defendant, or those he represents. The exception in the law of Illinois, applies to cases in which the United States have not parted with the title to the land, by granting a patent for it.—*Ib.*

A State has a perfect right to legislate as she may please in regard to the remedies to be prosecuted in her courts, and to regulate the disposition of the property of her citizens, by descent, devise or alienation. But congress is invested by the Constitution with the power of disposing of the public land, and making needful rules and regulations respecting it.—*Ib.*

When a patent has not been issued for a part of the public lands, a State has no power to declare any title less than a patent, valid against the claim of the United States to the land ; or against a title held under a patent granted by the United States.—*Ib.*

Whenever the question in any court, State or Federal, is, whether the title to property which had belonged to the United States has passed, that question must be resolved by the laws of the United States. But whenever the property has passed, according to those laws, then the property, like all others in the State, is subject to State legislation, so far as that legislation is consistent with the admission that the

limited in operation to one or two years, it was determined to change the system in these respects, and accordingly the Act of 4th September, 1841, which, together with the supplemental Act of 3rd March, 1843, entirely superseded the pre-emption laws above referred to, was passed. These enactments are of general and prospective application, and are still in force.

With regard to the legal effect of an unconsummated pre-emption right, the Supreme Court, in the case of *Lytle et al. v. The State of Arkansas*, 9 Howard, 333, held as follows :

“The claim of pre-emption is not that shadowy right, which by some it is considered to be. Until sanctioned by law, it has no existence as a substantive right; but when covered by the law it becomes a legal right, subject to be defeated only by a failure to perform the conditions annexed to it. It is founded in an enlightened public policy, rendered necessary

title passed and vested according to the laws of the United States.—*Wilcox v. Jackson*, 13 Pet. 498; 13 C. R. 266.

The judgment of every tribunal acting judicially, whilst acting within the sphere of its jurisdiction, where no appellate tribunal is created, is final; and even where there is such an appellate power, their judgment is conclusive when it only comes collaterally in question, so long as it is unreversed. But the reverse is true as to the judgment of any court acting beyond the pale of its authority.—*Ib.* See also *Elliott v. Piersol*, 1 Pet. 340.

The Act of Congress passed on the 4th of July, 1836, provided for a direct supervision by the Commissioner of the General Land-Office over Registers and Receivers of the land-offices, and, therefore, their judgment is not conclusive in a case where additional proceedings were had before them. The cases of *Wilcox v. Jackson*, 13 Pet. 511; and *Lytle v. Arkansas*, 9 How. 333, explain^{ed}. See *Barnard's Heirs v. Ashley's Heirs*, 18 How. 43.

Extract from the opinion of the Supreme Court, delivered in the case of *Barnard's Heirs v. Ashley's Heirs*, 18 Howard, 44, 45. “According to the conceded facts, it is insisted, on the part of Ashley and Craig, that the Register and Receiver having on due proof and examination, rejected Barnard's claim to a preference of entry of the four quarter-sections, he is thereby concluded from setting them up in a court of equity, because the Register and Receiver acted in a judicial capacity, and their judgment being subject to no appeal, is conclusive of the claim. And the cases of *Jackson v. Wilcox* and *Lytle v. The State of Arkansas*, are relied on to maintain this position.

“In cases arising under the pre-emption laws of 29th May, 1830, and of the 19th June, 1834, the power of ascertaining and deciding on the facts, which entitled a party to the right of pre-emption, was vested in the Register and Receiver of the land district in which the land was situated, from whose decision there was no direct appeal to higher authority. But even under these laws, the proof on which the claim was to rest, was to be made ‘agreeably to the rules to be prescribed by the Commissioner of the General Land-Office,’ and if not so made, the entry would be suspended, where the proceeding was brought before the Commissioner by an opposing claimant. In cases, however, like the one before us, where an entry had been allowed on *ex parte* affidavits, which were impeached, and the land claimed by another founded on an opposing entry, the course pursued at the General Land-Office was to return the proofs and allegations in opposition to the entry to the district office, with instructions to call all the parties before the Register and Receiver, with a view of instituting an inquiry into the matters charged; allowing each party on due notice, an opportunity of cross-examining the witnesses of the other, each being allowed to introduce proofs; and on the close of the investigation the Register and Receiver were instructed to report the proceeding to the General Land-Office, with their opinion as to the effect of the proof, and the case made by the additional testimony. And on this return the Commissioner does in fact exercise a supervision over the acts of the Register and Receiver. This power of revision is exercised by virtue of the Act of July 4, 1836, § 1, which provides ‘that from and after the passage of this act, the executive duties now prescribed or which may hereafter be prescribed by law, appertaining to the surveying and sale of the public lands of the United States, or in anywise respecting such lands; and also such as relate to private claims of land, and

by the enterprise of our citizens. The adventurous pioneer who is found in advance of our settlements, encounters many hardships, and not unfrequently, dangers from savage incursions. He is generally poor, and it is fit that his enterprise should be rewarded, by the privilege of purchasing the favorite spot selected by him, not to exceed one hundred and sixty acres."

The time fixed by the laws for filing notices of pre-emption claims to unoffered lands, varies in different States and Territories.

In California, a claimant of unsurveyed lands must file with the Register and Receiver of the proper Land Office, a notice of his intention to purchase the specific tract claimed, under the provisions of the pre-emption laws, within three months after the return of plats of survey to the land offices. (No. 224.)

In Oregon and Washington Territories, notices must be filed within six

the issuing of patents for all grants of land under the authority of the Government of the United States, shall be subject to the supervision and control of the Commissioner of the General Land-Office, under the direction of the President of the United States.' The necessity of 'supervision and control,' vested in the Commissioner acting under the direction of the President, is too manifest to require comment, further than to say that the facts found in this record, show, that nothing is more easily done than apparently to establish by *ex parte* affidavits, cultivation and possession of particular quarter-sections of land, when the fact is untrue. That the Act of 1836, modifies the powers of Registers and Receivers to the extent of the commissioner's action in the instances before us, we hold to be true. But if the construction of the Act of 1836, to this effect were doubtful, the practice under it for nearly twenty years, could not be disturbed without manifest impropriety.

"The case relied on of *Wilcox v. Jackson*, 13 Peters, 498, was an ejectment suit commenced in February, 1836; and as to the acts of the Register and Receiver, in allowing the entry in that case, the commissioner had no power of supervision, such as was given to him by the Act of July 4, 1836, after the cause was in court.

"In the next case, 9 Howard, 333, all the controverted facts on which both sides relied, had transpired and were concluded before the Act of July 4, 1836, was passed: and therefore its construction as regards the commissioner's powers under the Act of 1836, was not involved; whereas, in the case under consideration, the additional proceedings were had before the Register and Receiver in 1837, and were subject to the new powers conferred on the commissioner. In *Lytle's case*, we declared that the occupant was wrongfully deprived of his lawful right of entry under the pre-emption laws, and the title set up under the selection of the governor of Arkansas, was decreed to Cloyes the claimant, this court holding his claim to the land to have been a legal right, by virtue of the occupancy and cultivation, subject to be defeated only by a failure to perform the conditions of making proof and tendering the purchase-money. Here the facts were examined to ascertain which party had the better right; and following out that precedent, we must do so here."

The ignorance of the pre-emptioner that the land was reserved, does not prevent the entry from being void.—*Kissell v. St. Louis Public Schools*, 18 How. 19.

Where a patent for land is issued by the officers of the United States, the presumption is that it is valid, and passes the legal title. But this may be rebutted by proof that the officers had no authority to issue it, on account of the land not being subject to entry and grant.—*Winter v. Crommelin*, 18 How. 87.

In a case where the Register and Receiver of public lands have been imposed upon by *ex parte* affidavits, and the patent has been obtained by one having no interest secured to him in virtue of the pre-emption laws, to the destruction of another's right, who had a preference of entry which he preferred and exerted in due form, but which right was defeated by false swearing and fraudulent contrivance, brought about by him to whom the patent was awarded, in such a case the jurisdiction of the courts of justice is not ousted by the regulations of the Commissioner of the General Land Office.—*Garland v. Wynn*, 20 Howard, 6.

It would be unsafe for the land officers to permit entries and to receive purchase-moneys from persons not claiming pre-emption rights, without first ascertaining whether there is a settler on the land entitled to pre-emption; but such right is inchoate, and can only become complete by making the proof and payment required

months after the survey of the land has been made and returned. (Act 17th July, 1854, sec. 3, No. 244.)

In Kansas and Nebraska, within three months after the survey has been made in the field. (Act 22d July, 1854, sec. 12, No. 245.)

In Minnesota, within three months after the survey has been made, and the plats returned. (Act 4th August, 1854, No. 255.)

In New Mexico, within three months after the survey has been made and returned. (Act 22d July, 1854, sec. 7, No. 245.)

Notices of claims on lands which have once been offered at public sale, must be filed within thirty days after the claimant has settled, throughout the United States.

Claimants of unoffered lands, which have been surveyed, must file their notices within three months after settlement, and must make proof and payment before the date fixed in the President's proclamation, for the sale of the body of lands in which their claims may be situated.]

by the act during its continuance, and consequently, will not prevent the emanation of a patent after the act has expired, if these requisites have not been complied with.—(Opinion of Attorney-General, August 23, 1830; vol 2, p. 367.)

No pre-emption claim set up by any person, will justify the cutting and removing of timber from such lands, until title to the land claimed is acknowledged by the government, or maintained by the judgment of the court.—(Opinion, June 9, 1832; vol. 2, p. 524.)

The assignee of a pre-emption certificate (under Act of 1830,) takes it subject to the equities subsisting between the settler and the United States.—(Opinion, April, 1836; vol. 3, p. 91.)

The legal title is in the United States, until a patent issues; and where the equities are equal, the legal title will prevail.—*Ib.*

In cases of doubt, patents may be suspended until the question shall have been determined by a competent tribunal.—(Opinion, April 23, 1836; vol. 3, p. 102.)

There is reason to doubt whether a pre-emption to an accumulation of land in the Mississippi can be allowed to exist.—*Ib.*

Legal evidence from competent sources, (excluding the oaths of claimants and all interested parties,) is what is intended by the word "proof," contained in the Act of 29th May, 1830.—(Opinion, June 18, 1836; vol. 3, p. 126.)

The Commissioner of the General Land Office may prescribe the mode and kind of proof; how, and by whom it should be taken; but cannot prescribe anything as proof which is not such in fact, nor any rule as to its weight and force.—*Ib.*

Any entry allowed by the Register and Receiver upon the affidavit of the interested party, and only corroborated by facts within their knowledge, is only erroneous and voidable, not void as against the United States.—*Ib.*

Settlers or occupants within the meaning of the law of 1832, are those who resided personally on the public land in question, or who occupy and use it. Settlements and occupancy cannot be effected by proxy.—*Ib.*

Certain lands having been actually entered under the pre-emption laws, pursuant to instructions sent to the Register and Receiver from the Treasury Department, the case is clearly brought within the terms of the second section of the Act of July 2, 1836, "to confirm the sales of public lands in certain cases;" and the patent should issue accordingly.—(Opinion, July 6, 1836; vol. 3, p. 139.)

A pre-emptor cannot be undermined by a subsequent fraudulent purchaser.—(Opinion, March 29, 1837; vol. 3, p. 182.)

A failure to pay for a pre-emption before a public sale of the lands in which it is situated, forfeits the right, and consequently the right to select eighty acres elsewhere; it may be saved, however, by a tender of payment in due time.—(Opinion, April 27, 1837; vol. 3, p. 211.)

An officer of the army of the United States, in actual service, may have a valid

No. 408.

Circulars to Registers and Receivers of the United States Land Offices.

GENERAL LAND OFFICE,
September 15, 1841.

Gentlemen:—Annexed (see No. 48, sections 10 to 15, inclusive,) is a copy of that portion of an act of Congress approved on the fourth instant, entitled "An act to appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights," which has relation to the subject of pre-emptions. Your attention is directed to the several provisions of that portion of said act, and your observance enjoined of the rules herein—

pre-emption claim as settler or occupant of public lands, although it may seem to be incompatible with the condition of an officer in actual service.—(Opinion, January 19, 1838; vol. 3, p. 303.)

The right of pre-emption attaches only to such public lands as are subject to the operation of the general land system of the country, and not to those which have, by the Act of Congress, been taken out of the class of public lands and appropriated to specific objects, or reserved for particular purposes, as for the cultivation of the vine and olive.—(Opinion, April 18, 1839; vol. 3, p. 456.)

The permissive possession of twenty-seven years may give the party strong equities, which may be addressed to the legislature; yet the land officers can only be governed by existing acts of Congress.—(Opinion, July 8, 1840; vol. 3, p. 563.)

The right of pre-emption, if otherwise mature, may be allowed to lands reserved from sale, under the supposition that they fell within the limits of the grant in aid of the Milwaukie and Rock River canal, but subsequently found not to be included.—(Opinion, July 25, 1840; vol. 3, p. 577.)

The disallowance of a pre-emption claim, made by an assignee, of a certificate of purchase by the Register and Receiver, who had competent authority to judge of its validity on grounds satisfactory to them, that it was unfounded, is conclusive against the claim.—(Opinion, Oct. 19, 1841; vol. 3, p. 664.)

The acquittal of McDonald and Norton for perjury, charged to have been committed in swearing to the affidavit upon which the claim of pre-emption was grounded, is not conclusive upon the United States in the Land Department.—*Ib.*

The pre-emption grants give to the pre-emptioner a *jus ad rem*, but not a *jus in re*; and such a right, resting in contract, cannot always be carried out by specific performance.—(Opinion, April 29, 1842; vol. 4, p. 23.)

The sales made to pre-emptioners within the admitted or ascertained limits of the Houma grant, are entirely void under the sixth section of the Act of 1811.—(Opinion, Sept. 2, 1842; vol. 4, p. 92.)

In the cases of patents issued, there is no remedy except in the courts.—*Ib.*

Pre-emptioners under the act for the armed occupation and settlement of the unsettled part of the peninsula of East Florida, approved August 4, 1842, have no right to cut live oak or other timber for any purpose other than to clear, improve, and fence their land, until after the five years' occupation shall have enabled them to acquire a perfect title.—(Opinion, July 16, 1845; vol. 4, p. 405.)

A party, *prima facie* entitled to pre-emption, should not be precluded from receiving a patent for the land by the mere allegation of his being an alien.—(Opinion, May 27, 1852; vol. 5, p. 551.)

Decisions of Registers and Receivers upon the facts offered to establish pre-emption rights under the Act of 29th May, 1830, are conclusive.—(Opinion, April 21, 1836; vol. 3, p. 93.)

They act in a judicial capacity in weighing and deciding upon the sufficiency of the evidence offered; and although they are to observe the rules prescribed by the Commissioner of the land-office, they cannot be compelled to act upon any judgment but their own.—*Ib.*

after stated, as prescribed by the Secretary of the Treasury, in accordance with the 12th section of said act.

The individual claiming the benefits of said act must be—

First. A citizen of the United States, or have filed his declaration of intention to become a citizen.

Second. Either the head of a family, or a widow, or a single man over the age of twenty-one years.

Third. An inhabitant of the tract sought to be entered, upon which, in person, he has made a settlement and erected a dwelling-house* since the 1st of June, 1840, and prior to the time when the land is applied for;

* If a suitable house was already on the land, the claimant, according to recent decisions, is not required to erect another.

The issuing of patents, however, depends on the Commissioner, who may suspend them, where the decisions were obtained by fraud; or founded on material errors of fact or law, until the decision of the judiciary or the direction of Congress can be obtained.—(Opinion, April 21, 1836, vol. 3, p. 93.)

A certificate of pre-emption issued on the 1st June, 1840, under a right acquired under the pre-emption law of June 22, 1838, will prevail against a certificate of entry made April 10, 1839. The entry was subject to the condition that there was no pre-emption right to the land, and the pre-emption certificate relates back to June 22, 1838, and is thus the older right.—*Pettigrew v. Shirley*, 9 Mo. Reps. 675.

A State court will not interfere to set aside decisions of Registers and Receivers in pre-emption claims, under the Acts of 1838 and 1840, unless it be affected with fraud or coupled with a trust. But a State court will protect the rights of a pre-emptor against one claiming under a certificate merely, upon which a patent has not issued.—*Lewis v. Lewis*, 9 Mo. Reps. 182.

Where A. was entitled to a pre-emption right to certain lands, they could not be entered at private sale by B., and A. having applied to prove his pre-emption right, and being prevented by the officer, under the impression that the land was not subject to pre-emption, and entry of the land by B. while subject to the pre-emption of A. is void, although the pre-emption right was not proved up before the expiration of the law granting such right.—*Allison v. Hunter*, 9 Mo. Reps. 741.

The decision of the Register and Receiver granting a pre-emption, is conclusive only against the Government, that a right of pre-emption exists in consequence of a certain improvement; it is not conclusive between individuals contesting the right to the land.—*Bird v. Ward*, 1 Mo. Reps. 398.

A bill setting forth that A. made improvements on a tract of land and sold the same to B., who sold it to C., and that afterwards A. fraudulently obtained a certificate for the pre-emption right, contains equity, and a general demurrer will not lie to it. The equitable right in such case is in C., and a court of equity will compel A. to give up what he has fraudulently obtained.—*Ib.*

General Land Office Rulings.—Upon an inquiry recently addressed to this Office it was held as follows:—

Where an individual enters land at private entry, which is at the time claimed by pre-emption, he so enters it subject to the pre-emption, and is not entitled to notice of the time when, and place where the claimant by pre-emption makes his proof and payment; but if afterwards, he files in this Office, affidavits going to show fraud on the part of the pre-emptor, or a non-compliance with the law, a reinvestigation will be directed.

That neither the law nor the instructions require that the claimant should be an inhabitant of the tract claimed before the filing of his declaratory statement, and as to the meaning of the word "settler," the opinion of the Attorney-General, John Y. Mason, of the 25th April, 1846, in the case of certain conflicting claims, declared, that "from the moment he, (the claimant,) enters in person on land open to such a claim, (pre-emption,) with the *animus manendi*, or rather, with the intention of availing himself of the provisions of the Act referred to, (4th September, 1841,) and does any act in execution of that intention, he is a settler. He must afterwards give his notice of intention, inhabit, improve, build his house, and make his proof and pay-

which land must, at the *date of the settlement*, have had the *Indian title extinguished and been surveyed* by the United States.

A person failing in any one of these requisites can have no claim by virtue of this act.

A person bringing himself within each of the above requirements by proof satisfactory to the Register and Receiver of the land district in which the lands may lie, taken pursuant to the rules hereinafter prescribed, will, after having taken the affidavit required by the act, be entitled to enter, by legal subdivisions, any number of acres not exceeding one hundred and sixty, or a quarter-section, to include his residence, and he may avail himself of the same at any time prior to the day of the commencement of the public sale, including said tract, where the land has not yet been proclaimed.

Where the land was subject to private entry at the date of the settlement *made since 1st of June, 1840, and prior to the passage of this act*, and the settler is desirous of securing the same under this act, he must give notice of his intention to purchase the same under its provisions within *three months* from the passage of the law: that is, before the *fourth day of December next*.

[Where the land was subject to private entry at the date of the law, and a settlement shall *thereafter* be made upon such land, or] where the land shall hereafter become subject to private entry, and *after that period a settlement shall be made*, which the settler is desirous of securing under this act, such notice of his intention must be given within *thirty days* after the date of such settlement. Such notice, in both [all] cases must be a written one, describing the land settled upon, and declaring the intention of such person to claim the same under the provisions of this act. (*See forms A and B, hereto annexed.*)

In the first case the proof, affidavit, and payment, must be made within *twelve months* after the *passage of this act*; and in the second case, within *twelve months* after the *date of such settlement*.

These declaratory statements are to be regularly numbered by the Register in the order of their reception, and entered in a suitable book, columned off, to show the number, date when received, name of the party, and description of the tract claimed; and monthly abstracts of the

ment within the time stipulated, to perfect his right."—(Report of Chief Clerk of General Land Office, for January, 1856.)

In the pre-emption case of John Douglass, where the testimony showed, that the pre-emptor, who was the owner of the farm on which he resided, in the same township in which the tract claimed is situated, made a contract for its sale, receiving a portion only of the price, and gave a bond for a deed conditioned to be executed upon the payment, in full, of the price agreed upon, it was held, that the title of the vendee being defeasible by the non-performance of the condition, the fee simple was still in the vendor, and he was therefore such an owner and occupant of real estate as to preclude him from acquiring a right under the Pre-emption Act of 4th September, 1841; decided that the entry should be cancelled, and the purchase-money refunded.—(Report of Chief Clerk of the General Land Office, for July, 1856.)

In the case of German Button, who, on the 17th March last, made a regular application for the south half of the southeast quarter of section 33, township 28, north, range 9, west, Michigan, and paid the purchase-money, it appeared there was some informality or defect in the affidavit. He was allowed to perfect the testimony. This was not accomplished until July 14, 1856, being subsequent to the order for the general withdrawal of lands in that district, which reached the land officers on the 8th of June last. It was held, that the fact of the prior inception of the claim justified the recognition of his right to enter, and it was ordered to permit the entry accordingly.—(Report of the Chief Clerk of the General Land Office, for July, 1856.)

same are to be furnished to the General Land Office, with your other monthly returns.

The existence of these claims should be indicated on the township plats by marking, with *red ink*, a cross (+) on the spot occupied by the tract claimed; and, also, with red ink, noting on the same spot the number of the declaratory statement, in neat and very small *figures*, so as not too much to interfere with the regular annotations which will have to be made when the regular proof and payment shall have been made by the claimant, and his entry of the tract consummated. The existence of such claims should also be noted, *in pencil*, in their appropriate places in the *tract books*.

The tracts liable to entry under this act are some one of the following designations:

First. A regular quarter-section, notwithstanding its quantity may be a few acres more or less than one hundred and sixty; or a quarter-section which, though fractional in quantity by the passage of a navigable stream through the same, is still bounded by regular sectional and quarter-sectional lines.

Second. A fractional section, containing not over one hundred and sixty acres, or any tract being a detached or anomalous survey, made pursuant to law, and not exceeding said quantity.

Third. Two adjoining half quarter-sections (in all cases to be separated by a north and south line, except on the north side of townships, where the surveys are so made as to throw the excess or deficiency on the north and west sides of the township) of the regular quarters mentioned in the first designation; or, two adjoining eighty-acre subdivisions of the irregular quarters found on the north and west sides of townships, where more than two such subdivisions exist, or the excess may render them necessary, provided in the latter case the aggregate quantity does not exceed one hundred and sixty acres.

Fourth. Two half-quarter or eighty-acre subdivisions of a fractional or broken section, adjoining each other, the aggregate quantity not exceeding one hundred and sixty acres.

Fifth. A regular half-quarter and an adjoining fractional section, or an adjoining half-quarter subdivision of a fractional section, the aggregate quantity not exceeding one hundred and sixty acres.

Sixth. If the pre-emptor should not wish to enter the quantity of one hundred and sixty acres, he may enter a single half-quarter-section, (made by a north and south line,) or an eighty-acre subdivision of a fractional section.

Seventh. One or more adjoining [residuary*] forty-acre lots may be entered, the aggregate not exceeding one hundred and sixty acres.

Eighth. A regular half-quarter, a half-quarter subdivision, or a fractional section, may each be taken, with one or more [residuary*] forty-acre subdivisions lying adjoining, the aggregate not exceeding one hundred and sixty acres.

[These lots can only be called "*residuary*" after the sale of the other portions of the same quarter-section, or fractional quarter-section, pursuant to the act approved April 5, 1832, authorizing such minor subdivisions.

It is evident, therefore, that forty-acre subdivisions can, in no case, be permitted of land not yet proclaimed and offered at public sale.*]

Only one person on a quarter-section is protected by this law, and that is the one who made the *first settlement*, provided he shall have conformed to the other provisions of the law.

* Obsolete. See Act May 8, 1846.

A person who has once *availed himself* of the provisions of this act cannot, at any future period, or at any other land office, acquire another right under it.

No person who is the proprietor of *three hundred and twenty acres* of land in any State or Territory of the United States, is entitled to the benefits of this act.

No person who shall *quit or abandon his residence* on his own land to reside on the public land in the *same State or Territory*, is entitled to the benefits of this act.

No pre-emption right exists by reason of a settlement on and inhabitancy of a tract, unless at the date of such settlement the Indian title thereto had been extinguished, and the land surveyed by the United States.

The approval of the plat is the evidence of the legality of the survey; but in accordance with the spirit and intent of the law, and for the purpose of bringing the settler within its provisions, the land is to be construed as surveyed, when the requisite lines are run on the field and the corners established by the deputy surveyor.

No assignments or transfers of pre-emption rights can be recognized. The patents must issue to the claimants, in whose names alone all entries must be made.

SUNDRY DESCRIPTIONS OF LAND WHICH ARE EXEMPTED FROM THE OPERATIONS
OF THIS ACT.

First. Lands included in any reservation by any treaty, law, or proclamation of the President of the United States, and lands reserved for salines and for other purposes.

Second. Lands reserved for the support of schools.

Third. Lands acquired by either of the two last treaties with the Miami tribe of Indians in the State of Indiana, or which may be acquired of the Wyandot tribe of Indians in the State of Ohio, or other Indian reservation to which the title has been or may be extinguished by the United States at any time during the operation of this act.

Fourth. Sections of land reserved to the United States, alternate to other sections granted to any of the States for the construction of any canal, railroad, or other public improvement.

Fifth. Sections or fractions of sections included within the limits of any incorporated town.

Sixth. Every portion of the public lands which has been selected as a site for a city or town.

Seventh. Every parcel or lot of land actually settled and occupied for the purposes of trade, and not agriculture.

Eighth. All lands on which are situated any known salines or mines.

Persons claiming the benefit of this act are required to file duplicate affidavits, such as the law requires, and to furnish proof by one or more disinterested witnesses, to your entire satisfaction, of the facts necessary to establish the three requisites pointed out in the commencement of these instructions.

The witnesses are to be first duly sworn or affirmed to speak the truth, and the whole truth, touching the subject of inquiry, by some officer competent to administer oaths and affirmations; and, if not too inconvenient, by reason of distance of residence from your office, or other good cause, must be examined by you, and the testimony reduced to writing in your presence, and signed by each witness, and certified by the officer administering the oath or affirmation, who must also join you in certifying as to the respectability and credit of each witness.

In case adverse claims shall be made to the same tract, each claimant must be notified of the time and place of taking testimony, and allowed the privilege of cross-examining the opposite witnesses, and of producing counter proof, which should also be subject to cross-examination.

When, by reason of distance, sickness, or infirmity, the witnesses cannot come before you, you are authorized to receive their depositions; which must be, in all other respects, conformable to the within regulations.

The notice to adverse claimants should be in writing, and should be served in time to allow at least a day for every twenty miles the party may have to travel in going to the place of taking evidence. The proof, in all cases, should consist of a simple detail of facts merely, and not of statements in broad or general terms, involving conclusions of law. It is your exclusive province to determine the legal conclusions arising from the facts. For instance, a witness should not be permitted to state that a claimant is the "head of a family," &c., following the words of the law, but should set forth the facts on which he grounds such allegation: because such a mode of testifying substitutes the judgment of the witness for yours, and allows him not only to determine the facts, but the law. A witness may possibly conscientiously testify that a minor son living with a widowed mother was the head of the family; and, in another case, similar in point of fact, another witness, equally conscientious, might testify that the widowed mother was the head of the family. There cannot be a uniform construction given to the law, if it is carelessly left to the opinion of every witness. You are therefore instructed not to receive as testimony or proof, a general statement, which embodies, in general terms, the conclusions of law, without stating the facts specifically.

The witnesses must state, if the pre-emptor be the "head of a family," the facts which constitute him such, whether a husband having a wife and children, or a widower, or an unmarried person under twenty-one years of age, having a family, either of relatives or others depending upon him, or hired persons, or slaves.

All the facts respecting the settlement in person, inhabitaney or personal residence, *the time of commencement*, the manner and extent of continuance, as well as those showing the apparant objects, should be stated.

It must be stated that the claimant made the settlement on the land in person; *that he has erected a dwelling upon the land*;* that the claimant lived in it, and made it his home, &c. By this means, you will be enabled to determine whether or not the requisites of the law have been complied with in any given case. Should you decide against a claimant, who, feeling dissatisfied with such decision, may request, in writing, the opinion of this Office thereon, you will forthwith forward all the original papers touching said claim, and a brief report of your reasons for rejecting it; and in the meantime will not permit the land claimed to be entered or sold without an order from the Department.

The affidavit of the claimant in reference to the *fact of settlement*, &c., need not be required. It is, in no case, legal evidence on these points, and therefore should not form a part of the proof in reference thereto. The *only* affidavit required of the claimant is that prescribed by the 13th section of the act, which is to be taken before the Register or Receiver. (*See form C, hereunto annexed.*)

No entry must be permitted until this affidavit is taken. Duplicates thereof must be signed by the claimant, and the fact of the oath being

* This has been decided not to be requisite in cases where a habitable house had been previously erected.

taken must be certified by the Register or Receiver administering it : one copy to be filed in your office, and the other to be transmitted to this Office. Each entry made by virtue of this act must be designated by marking on the margin of your quarterly accounts and monthly abstracts, opposite to the tract, the abbreviation "*Pre'n*, 1841," and on the face of the receipt and of the certificate, "*Pre-emption Act of 1841.*"

You will continue, unbroken, the regular series of numbers and certificates. The original proof, affidavit, and receipt must be filed with the certificate of purchase, in each case, *each paper being appropriately endorsed*, and transmitted to this Office with your monthly abstract, which must contain and show the aggregate of lands sold and the purchase-money at the foot of the abstract. Also, a separate aggregate of the lands sold and the purchase-money under each of the pre-emption acts by virtue of which any entries in that month may be made. No excuse can be allowed for negligence in observing this direction.

The forms for applications, receipts, and certificates will be the same as those used for private entries, the distinct provision for land subject to private entry rendering a separate form for lands of the latter description unnecessary.

Very respectfully, gentlemen,

Your obedient servant,

E. M. HUNTINGTON, Commissioner.

The Register of the Land Office, and Receiver of Public Moneys,
 _____ Land Office at _____.

Declaratory Statements of a Settler on land subject to private entry at the date of Settlement, required by the fifteenth section of the Act of fourth September, 1841.

FORM A.

For cases where, at the date of the law, the land claimed was subject to private entry.

I, A. B., of _____, being [the head of a family, or widow, or single man over the age of twenty-one years, as the case may be, and a citizen of the United States, or having filed my declaration to become a citizen as required by the naturalization laws, as the case may be] have, since the first day of June, 1840, to wit, on the _____ day of _____, A. D. 185—, settled and improved the _____ quarter-section number _____, in township number _____, of range number _____, in the district of lands subject to sale at the land office at _____, and containing _____ acres, which land *was subject to private entry at the passage of the Act of 4th September, 1841*; and I do hereby declare my intention to claim the said tract of land as a pre-emption right under the provisions of said Act of 4th September, 1841.

Given under my hand, this _____ day of _____, A. D. 185—.

(Signed)

A. B.

In presence of C. D.

FORM B.

For cases where the land claimed shall have been rendered subject to private entry since the date of the law.

I, A. B., of _____, being [the head of a family, or widow, or single man over the age of twenty-one years, as the case may be, a citizen of the United States, or having filed my declaration to become a citizen as re-

quired by the naturalization laws, as the case may be] did, on the ——— day of ———, A. D. 185—, settle and improve the ——— quarter of section number ———, in township number ———, of range number ———, in the district of lands subject to sale at the land office at ———, and containing ——— acres, which land *has been rendered subject to private entry since* the passage of the Act of 4th September, 1841, but prior to my settlement thereon; and I do hereby declare my intention to claim the said tract of land as a pre-emption right, under the provisions of said Act of 4th September, 1841.

Given under my hand this ——— day of ———, A. D. 185—.

(Signed)

A. B.

In presence of C. D.

FORM C.

Affidavit required of pre-emption claimant.

I, A. B., claiming the right of pre-emption under the provisions of the act of Congress, entitled "An act to appropriate the proceeds of the sale of the public lands, and to grant pre-emption rights," approved September 4, 1841, to the ——— quarter of section number ———, of township number ———, of range number ———, subject to sale at ———, do solemnly swear [or affirm, as the case may be] that I have never had the benefit of any right of pre-emption under this act; that I am not the owner of three hundred and twenty acres of land in any State or Territory of the United States, nor have I settled upon and improved said land to sell the same on speculation, but in good faith to appropriate it to my own exclusive use or benefit; and that I have not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which I may acquire from the government of the United States should inure, in whole or in part, to the benefit of any person except myself.

(Signed)

A. B.

I, C. D., Register [or E. F., Receiver] of the land office at ———, do hereby certify that the above affidavit was taken and subscribed before me, this ——— day of ———, A. D. 185—.

(Signed)

C. D., Register, or
E. F., Receiver.

No. 409.

GENERAL LAND OFFICE,
November 25, 1841.

Gentlemen:—In the instructions of 15th September last, an omission was made in not referring to a class of pre-emptors provided for in the act of fourth of that month.

In the first paragraph on the second page of that circular, the words "*Where the land was subject to private entry at the date of the law, and a settlement shall thereafter be made upon such land, or*" were omitted before the first sentence of that paragraph. They should have been inserted so as to have made that paragraph read, "Where the land was subject to private entry at the date of the law, and a settlement shall *thereafter* be made upon

such land, or where the land shall hereafter become subject to private entry, and *after that period a settlement shall be made*, which the settler is desirous of securing under this act, such notice of his intention must be given within *thirty days* after the date of such settlement."

The word "both," in the fourth line on the second page, should be "all;" and the word "case," in the ninth line of the same page, "cases."

A number of copies of this page will be furnished for the purpose of being attached to the circular of the above date, after the tenth page.

I am, very respectfully, gentlemen,

Your obedient servant,

E. M. HUNTINGTON, Commissioner.

The Register of the Land Office, and Receiver of Public Moneys,
 _____ Land Office at _____.

No. 410.

GENERAL LAND OFFICE,
 September 28, 1842.

Gentlemen:—The act of Congress, of the 26th August last, (No. 62,) entitled "An act to confirm the sale of public lands in certain cases," contains the following declaration, viz: "That the act of fourth September, eighteen hundred and forty-one, entitled 'An act to appropriate the proceeds of the sales of public lands, and to grant pre-emption rights,' shall be so construed as not to confer on any one a right of pre-emption by reason of a settlement made on a tract heretofore sold under a prior pre-emption law, or at private entry, when such prior pre-emption or entry has not been confirmed by the General Land Office, on account of any alleged defect therein, and when such tract has passed into the hands of an innocent and bona fide purchaser."

No entry will therefore be permitted, by virtue of the Act of 4th September, 1841, of any tract of land sold prior to 26th August last, whether by pre-emption or private entry, where such entry has been rejected by this Office; provided the land so purchased has, prior to that time, "passed into the hands of an innocent bona fide purchaser."

All transfers or assignments to third persons are presumed to be to "innocent and bona fide purchasers," unless the contrary is shown by satisfactory evidence.

The books and plats of your office will show whether a sale of the land by the government has been made; and where the records or papers do not exhibit evidence of a transfer or assignment from the original purchaser to another person, information must be sought and had from this Office, before permitting a claimant under the Act of 4th September, 1841, to enter the land so sold.

The experience of this Office as to the operation of the Act of 4th September, 1841, during the past year, seems to require the additional instructions subjoined.

You will require of every claimant, *satisfactory proof* that he had not left his "own land in the same State or Territory," to make the settlement by virtue of which he claims a right under the Act of 4th September, 1841.

Lands subject to private entry, at the time of the settlement thereon, cannot be entered by the settler under the law of 4th September, unless he shall file a declaratory statement, such as the 15th section of the act requires, and in due time produce the necessary proof of his right, and make the affidavit required by the law.

Where such settler, instead of entering the land, as he might, at private entry, elects to enter the same under the provisions of the law of 4th September, 1841, (whereby he obtains a year's time from the date of the settlement to make the payment,) he is bound to comply with *all* the requirements of that law. A failure to do so, in regard to any of these requirements, renders the land subject to the entry "of any *other* purchaser,"* *and any person so failing is positively debarred by the law from the privilege of making a private entry of the same under any pretence.* Instances have been made known where persons filed the declaratory statement, as required, without any improvements having been made, merely with a view of keeping the land from being entered by any other person for a year, intending near the expiration of that time to abandon their pretended pre-emption claim, and enter the same at *private entry*. The consummation of all such cases must be prevented, and this can be done by requiring a rigid compliance with all the provisions of the law, as above directed.

A claimant is bound to prove his right to, and enter, *all* the land embraced by his declaratory statement, if liable to the operation of the act.

Declaratory statements are required *only*† "for land subject to private entry" at the time of settlement, and they should not be received, filed, or reported to this Office, if presented for any other land; nor should they be received for forty-acre‡ lots, unless they are "*residuary*" ones, such minor subdivisions, with the exception of residuary§ tracts, not being liable to the operation of the Act of 4th September, 1841. The law provides only for settlements made *since* 1st June, 1840. Where, therefore, parties have made settlements *prior* to that time, and have not availed themselves of the privileges of the pre-emption Act of 1st June, 1840, their own neglect has deprived them of any right of pre-emption founded on such settlements.

The proof filed by *every* claimant must show the *time*|| of the commencement of the settlement, as required by the first paragraph, fifth page of the Instructions of 15th September, 1841. (No. 408.)

The affidavit of the claimant required by the 13th section of the act *must* be taken "before the *Register* or *Receiver* of the land district in which the land is situated" before an entry is permitted, and must be of the same date with the certificate of entry. An affidavit *before any other person* will not justify your permitting the entry of the land claimed.

To entitle a claimant to the benefits of the Act of the 4th September, 1841, it is necessary that he should have been either a citizen of the United States, or have filed his declaration of intention to become a citizen, *at the time of the settlement* upon which his claim is based.

The law confers only on the *first* settler the right of pre-emption. The

* Obsolete. See proviso to 9th section, Act of 3d March, 1843, (No. 72.) Circular of 8th May, 1843, (No. 411.)

† Since the date of this Circular, the Act of 3d March, 1843, has been passed, the 5th section of which requires similar declaratory statements for "unoffered land." See Circular of the 8th May, 1843. (No. 411.)

‡ By Act of 8th May, 1846, (No. 104,) forty-acre tracts, whether of "offered" or "unoffered" land, are rendered subject to pre-emption. See Circular of 14th May, 1846. (No. 412.)

§ Where an entry has been made of one forty-acre lot of a legal eighty-acre subdivision, in virtue of the Act of 5th April, 1832, (No. 24,) entitled "An act supplementary to the several laws for the sale of the public lands," the *contiguous* forty-acre lot of such legal subdivision is called the "residuary quarter-quarter."

|| This date is all-important for the purpose of determining in *all cases* whether the settlement was made within the proper time; and in those where the declaratory statement is required, whether such statement was filed in due season, and the entry made within the legal period after the settlement.

question of priority will in all cases be decided by you; and where an appeal from such decision is taken, you will transmit to this Office, for reference to the Secretary of the Treasury, [Interior,] the evidence filed by all the parties claiming the said land, with a brief reference to the grounds of your decision.

The action of the Secretary of the Treasury [Interior] will be reported to you, and then the entry can be made by the person in whose favor the decision may be, on the Secretary's revision of the case.

Very respectfully, gentlemen,

Your obedient servant,

THO. H. BLAKE, Commissioner.

The Register of the Land Office, and
Receiver of Public Moneys, at ———.

No. 411.

GENERAL LAND OFFICE,
May 8, 1843.

Gentlemen:—Annexed (see No. 72,) is a copy of an act of Congress, approved on the 3d March last, "to authorize the investigation of certain alleged frauds under the pre-emption laws, and for other purposes."

Wherever the time prescribed for making proof and payment on a claim, by the law under which it originated, has expired, the provisions of the present act do not apply.

The *first* section of the act, being of special application to a single land district, has been acted on accordingly.

The *second* section provides for the rights of parties who shall have died before consummating their claims by the filing, in due time, of all the papers essential to establish the same. Under it you are authorized, if proof of such right shall be filed and payment therefor be made by the *executor, administrator, or one of the heirs during the period prescribed by the law upon which the claim is founded*, to permit the entry in the name of "*the heirs*," of the deceased claimant. A patent on such an entry will cause the title to inure to said heirs as if their names had been specially mentioned. In cases of this kind, the affidavits required of the pre-emptor by the Acts of June 22, 1838, June 1, 1840, and September 4, 1841, (No. 48,) respectively, will be taken by the person so filing the proof; and should such person be one of the heirs, he or she should be of age, and mind competent to appreciate the nature and obligation of an oath. [Forms for such affidavits are hereto annexed, marked A and B.]

The *third* section provides for cases *under all the previous pre-emption laws*, except that of September 4, 1841, where the settlement was made on *unsurveyed land* and is subsequently discovered to interfere with *section sixteen*, reserved for schools, or with a *tract reserved* for any other purpose, or with a tract covered by a *private claim*. It admits the settler thus circumstanced to enter any other *quarter-section*, or *fractional section*, or *fractional quarter-section*, in the same land district, so as *not to exceed one hundred and sixty acres* of land, not reserved from sale or in the occupancy of any other bona fide settler.

Under the third section of the Act of 1st June, 1840, settlers within the purview of the Act of 1838 or 1840, who resided on a sixteenth section reserved for schools, did enjoy the right of locating a "*quarter-section*" anywhere else in the same land district, to which no other person had "*a right of pre-emption*." The present act, in extending to such settlers on

a sixteenth section the increased privilege of locating at their option other *species of tracts*, viz: "*fractional section*," or "*a fractional quarter-section*," restricts the previous privilege of location to *vacant and unimproved land*. No location is to be allowed by you under this section of the act, unless upon the filing of satisfactory proof that the substituted land is not in the occupancy of any bona fide settler; which testimony, with the other papers in the case, you will transmit to this Office. [See Note I., *post*.]

The *fourth* section declares it unlawful for an individual who has once filed a declaration for one tract of land, to file at any future time a second declaration for another tract. This has reference to those required, under the 15th section of the Act of 1841, for land subject at the time of settlement to entry *at private sale*. Your record of such declarations will afford you some means of detecting a violation of this provision; and whenever you do detect it by any means whatever, you are to refuse to receive or notice the same; and if such declaration shall have been received and reported to this Office before the discovery is made, such fact will not prevent your regarding the land as subject to the entry of the first applicant, in the same manner as if no declaration had been filed.

The *fifth* section requires that similar notices or declarations in writing should be filed by settlers under the Act of 4th September, 1841, on land *not subject to private entry*. These declarations are to be filed in your office by every such settler within *three months after his settlement*, except as to those whose settlements were made prior to the 3d March last; in which cases, such declarations are to be filed within *three months from that date*, viz: before the 3d June next. The register will number such statements regularly in the order of their date of reception, enter them in a suitable book prepared therefor, furnish this Office with monthly abstracts from said book, and in all other respects pursue the same course in relation to them as he is required to do by the 3d and 4th paragraphs on the second page of the Circular of 15th September, 1841, in regard to the declarations therein referred to. Particular care must be taken not to confound the two species of declarations, but to keep separate files thereof, enter them in the respective books prepared for each, and in the monthly abstracts transmitted to this Office, discriminate between the two by heading the one "For land subject to private entry," and the other "For land not yet offered for sale." [A form for a declaration under this section of the act is hereto appended, marked C.]

By the sixth section, provision is made for the benefit of claimants whose rights might otherwise be jeopardized by reason of a vacancy which has occurred, or may hereafter occur, in either of your offices, or both. By it a claimant is authorized hereafter to file a declaration, under the law of 4th September, 1841, or to make an entry of a claim under any of the pre-emption laws, although the time prescribed by the law for the filing of such declaration or the making of such entry shall have expired, provided the claimant was prevented by such vacancy from performing said act or acts within such time, and shall perform the duties required by the law within the *same period* after the disability is removed as he would have had if such vacancy had not occurred. [See Note II., *post*.]

The seventh section extends the privileges given to one class of claimants under the Act of 22d June, 1838, by the 1st section of the Act of 1st June, 1840, to another class of claimants under the same law. In future, a settler who shall have resided, "on the 22d June, 1838, and for four months next preceding," on a *quarter-section*, a *fractional quarter-section*, or a *fraction of a section less than one hundred and sixty acres*, and have cultivated land on any other and different tract of either of the descriptions above

mentioned, such settler is entitled to a choice between the tract resided on and the tract cultivated, or legal subdivisions of each, to include his or her house and farm, so as not to exceed one hundred and sixty acres, upon filing the requisite proof and making payment for the land claimed within the period prescribed by law. This extension of benefits is made to *single* settlers, and to those only whose settlements were made at the period required by the Act of 22d June, 1838; it does not apply to settlements made since 22d June, 1838, and prior to 1st June, 1840. [See Note III., *post.*]

The eighth section modifies the first proviso of the Act of 22d June, 1838, applicable as well to claims under that act as to those under the Act of 1st June, 1840. In future, where two or more were residing on a *quarter-section*, *fractional quarter-section*, or *fraction of a section less than one hundred and sixty acres*, at the period required by the Act of 22d June, 1838, or that of 1st June, 1840, and any one or more of such residents were cultivating, during the same period, on another and different tract, or other and different tracts, the persons so cultivating have the option of entering the tract lived on, *jointly* with the other or others, or of abandoning the tract lived on to those who have not cultivated, and entering the tract or tracts cultivated, so as not to exceed one hundred and sixty acres to any one settler so cultivating. Where the persons cultivating do not abandon the tract resided on, a *joint entry* by *all* the residents may be made of such tract and other "*contiguous unoccupied lands*, by legal subdivisions," to the extent of as many times one hundred and sixty acres, in the whole, as there are residents on the first mentioned tracts entitled under the same law. Where the cultivator or cultivators abandon the tract resided on to the other residents, the former are entitled to make a separate entry of the tract or separate entries of the tracts cultivated, not to exceed one hundred and sixty acres to any one settler, and the latter have no claim to any land in addition to that resided on. In cases under this section of the act, each cultivator must file separate proof of his right, so as to enable you to file the same with the separate entry of such cultivated tract. The "*contiguous*" unoccupied land referred to in this section of the act is to be understood as land separated from the tract resided on, by a line only, not land in the neighborhood as near as may be; and where there is no such contiguous land, by reason of its being rightfully claimed by, or in the occupation of others, the right fails. Such *contiguous* land is to be embraced in the same certificate with the land on which the claimants reside.

The proviso to this eighth section limits the extended privileges given by the act. It may, therefore, happen that a tract *other than a quarter-section* may be claimed (under the provisions of the 7th and 8th sections of this act) by virtue of its cultivation during the period required by the Act of 22nd June, 1838, where the same tract is claimed by a *resident* thereon under the Act of 1st June, 1840, or under that of 4th September, 1841; or it may be the subject of conflict between a cultivator at the time required by the Act of 1st June, 1840, (under the eighth section of this act,) and a *resident* under the Act of 4th September, 1841. In all such cases, the first mentioned claims, which would otherwise exist under this act, must yield to the "previous and paramount right of pre-emption," founded on the provisions of law existing at the date of this act. [See Note IV., *post.*]

By the ninth section you are authorized to permit the entry of a claim under the Act of 4th September, 1841, although it may be for land *not surveyed* at the time of the settlement, where such settlement was made *prior* to the 4th September, 1841, and *after the extinguishment* of the Indian title. The object of this, it will be seen, is to modify the provi-

sions of the Act of 1841, so far as to remove from claims under it the fatal objection of being founded on a settlement made *before* the survey, provided such settlement was made *prior* to the 4th September, 1841.

The concluding paragraph of the ninth section renders inoperative the construction placed by this Office upon the latter part of the fifteenth section of the Act of 4th September, 1841. That portion, therefore, of the last paragraph on the first page of Circular of 28th September, 1842, which relates to this subject, is annulled; and you are instructed to permit a person who has filed, or shall hereafter file, according to law, a declaratory statement for a tract of land *subject to private entry*, to enter the same *after* the twelve months, from the time of his settlement shall have expired, without filing any proof of his right as a pre-emptor, provided he is the first applicant, after that time, for the entry of the same at private sale. [See Note V., *post.*]

I am, very respectfully,
Your obedient servant,
THO. H. BLAKE, Commissioner.

NOTE I.

[The pages herein referred to will be found in Part I., "Laws, Instructions and Opinions."]

Claims under this third section may arise under the act of 5th February, 1813, (page 225,) and the fifth section of the act of 12th April, 1814, (page 244,) inasmuch as those laws are yet operative on land (to which the Indian title was extinguished at their respective dates,) situated in a township *not yet offered for sale*, and which land is within the bounds of the then Territories of Illinois and Missouri and that part of the State of Louisiana which composed the theretofore Territory of Orleans. The proof and payment, under these acts, were not required to be made until *two weeks prior to the commencement of the public sale*.

Claims may also arise under Act of 29th May, 1830, (No. 22,) the proviso to the Act of 5th April, 1832, (No. 24,) the Act of 19th June, 1834, (No. 28,) the Act of 22d June, 1838, (No. 38,) and Act of 1st June, 1840, (No. 40,) entitled "An act supplemental to the act entitled 'An act to grant pre-emption rights to settlers on the public lands,' approved June 22, 1838," inasmuch as the five last mentioned acts—the first, third, fourth and fifth, by virtue of the Act of 14th July, 1832, (No. 25,) and the second by virtue of the Act of 2d March, 1833, (No. 27,)—are operative on land subject to pre-emption at their respective dates, where the plats have not yet been returned to your office, or, being so returned, the year subsequent thereto shall not have expired when the claim is preferred.

The third section of the Act of 27th February, 1815, (page 257,) the third section of the Act of 3d March, 1819, (page 312,) and the third section of the Act of 1st June, 1840, (as explained in the body of this circular,) all provided for settlements on school lands made by claimants at the periods required by Acts of 1813, 1814, 1838, and 1840, before referred to; but these provisions are now all merged in this third section of the Act of 3d March last, and all future locations are to be made in accordance with its provisions.

NOTE II.

The fifteenth section of the Act of 4th September, 1841, requires that the declarations therein referred to shall be filed within *thirty* days after the settlement, and the proof and payment made within *twelve months* after such settlement.

The fifth section of the Act of 3d March last, requires the declarations, in cases to which it has reference, to be filed within *three months after the date of the act* where settlement was made *prior* to the 3d March last, or *three months after the settlement* where it shall be made *subsequent* to said 3d March, and the proof and payment may be made at any time before the *commencement of the public sale* which shall embrace the land claimed.

NOTE III.

The first section of the Act of 1st June, 1840, gave to a settler under Act of 22d June, 1838, residing on one "*quarter-section*" and cultivating land on "another and different *quarter-section*," the right of entering either of said quarter-sections, or legal subdivisions of each, not to exceed one hundred and sixty acres. This privilege embraced only *single settlers* on such tracts—namely, where but *one* settler was residing on one and cultivating the other of such tracts; because only in such cases could the choice given be exercised. This section extends a similar privilege to such *single* settlers, under Act of 1838, on other tracts than a "*quarter-section*," but has omitted to provide for like cases under Act of 1st June, 1840.

NOTE IV.

The first proviso of the Act of 22d June, 1838, declares that "where more than one person may have settled upon and cultivated any one quarter-section of land, each one of them shall have an equal share or interest in the said quarter-section, but shall have no claim, by virtue of this [said] act, to any other land." This proviso was not affected by the first section of the Act of 1st June, 1840—that referring only to *single* settlers on a *quarter-section*. [See Note III.] It is now entirely superseded, in regard to future cases under Acts of 1838, and 1840, where there are two or more settlers on the same quarter-section, by the eighth section of the Act of 3d March last, which not only gives extended privileges to such settlers under either of said acts on a *quarter-section*, but makes provision for like settlers on *other tracts* than a quarter-section.

NOTE V.

The Act of 4th September, 1841, conferred no right where the settlement was made on land to which the Indian title had not been extinguished, and which was not also surveyed at the time of such settlement.

The latter part of the fifteenth section of the Act of 4th September, 1841, provided that a failure on the part of a claimant under that section to do any of the acts required thereby, should render the land subject to the entry "of any other purchaser." The Circular of 28th September, 1842, (No. 410,) directed such a construction of this latter clause to be observed by the land officers as would prevent such a claimant from coming forward to enter, at private sale, land previously claimed by him as pre-emptor, after keeping it for twelve months from being purchased by any one else. He had elected to take it as a pre-emptor, and, as such, was bound under that law to prove his right; and it was believed that Congress, in declaring the land subject to the entry of "any other purchaser," should he fail to make good his right of pre-emption, expressly designed to exclude him in consequence of his neglect or inability to show the truth of his declaratory statement by which the land was for twelve months withheld from being sold to any other person.

FORM A.

Affidavit to be filed in cases (under Act of 22d June, 1838, or 1st June, 1840,) where the settler shall have died before proving up and entering his claim.

I, A. B., [executor of the estate of C. D., or administrator of the estate of C. D., or one of the heirs of C. D., aged — years, as the case may be,] do solemnly swear [or affirm, as the case may be,] that said C. D., to the best of my knowledge and belief, entered upon the — quarter of section number —, of township number —, of range number —, subject to sale at —, in his own right, and exclusively for his own use and benefit; and that he has not, directly or indirectly, made any contract or agreement, in any way or manner, with any person or persons whatever, by which the title to the land which he might have acquired from the government of the United States, by virtue of said settlement, under the law of 22d June, 1838, [or 1st June, 1840, as the case may be,] should enure to the use or benefit of any one except himself, or to convey or transfer the said land, or the title which he might have acquired to the same, to any other person or persons whatever at any subsequent time.

A. B., Executor of the estate of C. D.
[or administrator of the estate of C. D., or one
of the heirs of C. D., as the case may be.]

Sworn to and subscribed before me, this — day of —, A. D. 185—.

E. F., Register, or
G. H., Receiver, or
I. K., Justice of the Peace.

FORM B.

Affidavit to be filed in cases (under Act of 4th September, 1841,) where the settler shall have died before proving up and entering his claim.

I, A. B., [executor of the estate of C. D., or administrator of the estate of C. D., or one of the heirs of C. D., aged — years, as the case may be,] do solemnly swear [or affirm, as the case may be,] that to the best of my knowledge and belief, the said C. D., who was a settler on the — quarter of section number —, of township number —, of range number —, subject to sale at —, has never had the benefit of any right of pre-emption under the act entitled "An act to appropriate the proceeds of the sales of the public lands and to grant pre-emption rights," approved September 4, 1841; that he was not, at the time of his death, the owner of three hundred and twenty acres of land in any State or Territory of the United States; that he did not settle upon and improve the above tract of land on speculation, but in good faith to appropriate it to his own exclusive use and benefit; and that he has not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which he might have acquired from the government of the United States should enure, in whole or in part, to the benefit of any person except himself.

(Signed) A. B., Executor.
[or administrator, or one of the heirs
of C. D., as the case may be.]

I, E. F., Register [or G. H., Receiver] of the Land Office at —, do

hereby certify that the above affidavit was taken and subscribed before me, this — day of —, A. D. 185—.

(Signed)

E. F., Register, or
G. H., Receiver.

FORM C.

Declaratory statement for cases where the land is not subject to private entry.

I, A. B., of —, being [the head of a family, or widow, or single man over the age of twenty-one years, as the case may be, a citizen of the United States, or having filed my declaration to become a citizen as required by the naturalization laws, as the case may be], did, on the — day of —, A. D., 185—, settle and improve the — quarter of section number —, in township number —, of range number —, in the district of lands subject to sale at the land office at —, and containing — acres, *which land has not yet been offered at public sale, and thus rendered subject to private entry*; and I do hereby declare my intention to claim the said tract of land as a pre-emption right, under the provisions of said Act of 4th September, 1841.

Given under my hand, this — day of —, A. D. 185—.

(Signed)

A. B.

In presence of C. D.

No. 412.

GENERAL LAND OFFICE,
May 14, 1846.

Gentlemen:—Enclosed I send you a copy of an act entitled “An act to repeal a part of the act entitled ‘An act supplementary to the several laws for the sale of the public lands,’ approved April fifth, one thousand eight hundred and thirty-two,” and for other purposes, approved May 8th, 1846, (No. 104.)

Under the provisions of this act, forty-acre tracts or quarter quarter-sections, are subject to entry, selection, or location, precisely in the same manner that eighty-acre tracts, or half quarter-sections, have heretofore been; consequently the affidavits for the entry of quarter-sections, heretofore required, will now be dispensed with; and it will no longer be necessary to note these entries on the returns, as being under the Act of 5th April, 1832. All lands, however, will be offered at *public sale*, in half quarter-sections, or eighty-acre tracts, as heretofore.

Very respectfully, your ob’t servant,

JAMES SHIELDS, Commissioner.

Register of the Land Office, and Receiver of Public Moneys at —.

No. 413.

Public Notice.

GENERAL LAND OFFICE,
April 5, 1854.

Whereas, by an act of Congress approved March 27, 1854, (No. 234,) entitled “An act for the relief of settlers on lands reserved for railroad purposes,” every settler on public lands “which have been or may be withdrawn

from market in consequence of proposed railroads, *and who had settled thereon prior to such withdrawal*, shall be entitled to pre-emption, *at the ordinary minimum*, to the lands settled on and cultivated by them: *Provided*, they shall prove up their rights according to such rules and regulations as may be prescribed by the Secretary of the Interior, and pay for the same before the day that may be fixed by the President's proclamation for the restoration of said lands to market;" public notice is hereby given, by direction of the Secretary of the Interior, that all such settlers will be entitled to the right of pre-emption given by the said act, upon furnishing *proof* (satisfactory to the district office) that the settlement on which the claim is predicated is of a character to entitle the settler to a right of pre-emption under the provisions of the Act of 4th September, 1841, and was made by such settler *prior* to the "withdrawal" of the land for the purpose stated, no "declaration" of course, being necessary under the circumstances: provided payment be made for the same "before the day that may be fixed by the President's proclamation for the restoration of said lands to market."

JOHN WILSON, Commissioner.

No. 414.

GENERAL LAND OFFICE,
October 24, 1856.

Gentlemen:—By reference to the enclosed copy of circulars, (No. 408,) you will perceive that in each case of pre-emption "the original proof, affidavit, and receipt *must be filed with the certificate of purchase, each paper being appropriately endorsed, and transmitted to this Office with your monthly abstracts,*" &c.

Where the claim is located by *warrant*, the proof, &c., must be filed *with it*.

Also, where it is only *in part* located and the residue paid for *in cash*.

In the *latter* class of cases, where the *excess* extends to, and is in satisfaction of a *legal subdivision*, it will be necessary to issue a certificate of *purchase* for such subdivision; in which cases the proof should accompany the *cash entry*—on which entry or certificate must be endorsed the fact that the residue of the claim has been located with *warrant*; giving the *number, act* under which issued, &c., and on the certificate of *location* make a reference to the *cash entry*.

Likewise, in your *military abstracts*, note opposite to each case of pre-emption, the *law* under which preferred; and where the claim is located *in part* only with warrant and the residue paid for, and a certificate of purchase issued, give the number of the *cash entry*.

A *strict compliance* with this requirement, and all others in the enclosed circulars, will be insisted upon.

Otherwise, confusion and unnecessary labor and delay must inevitably follow.

Respectfully, your obedient servant,

THOS. A. HENDRICKS, Commissioner.

Register and Receiver at —.

No. 415.

Circular respecting fees for pre-emption sales or locations.

GENERAL LAND OFFICE,
November 21, 1856.

Gentlemen :—It has been represented to this Office, that a practice has obtained at some of the local land offices of making out, or preparing, pre-emption papers, and charging money for the service, and such charges have been made the *subject of complaint*.

It is therefore deemed proper to issue the following instructions :

1st. Any such charges are without *authority of law*, and *against the orders* of the Department. It is proper, however, to add, that the duties of the local land officers which are prescribed by law and instructions, do not enjoin upon the Register and Receiver the making out or preparation of papers for claimants—that being a matter to be attended to by the pre-emptors themselves—yet it is the desire of the Department that all reasonable facilities and information shall be given by the Register and Receiver to parties, to enable them properly to prepare and present their claims for your official action thereon. For such official action, however, you have a legal right to a fee in virtue of the 12th section of the pre-emption Act of 4th September, 1841, (No. 48,) which declares that each officer is entitled to receive *fifty cents* for his services in acting upon each case of pre-emption ; but as, in many instances, the parties do nothing more than file the “notice” required by law, this Office has long since determined that there is no objection to the *Register* receiving his fee (fifty cents) at the time of filing such notice, making *subsequently no further charge*, but that, as the *Receiver* has no labor in the case until the proof is filed and submitted for his action, the latter officer has no right to the fee until he shall be called upon to perform the duty for which payment is provided.

2d. By the 2d section of the Act of 22d March, 1852, (No. 190,) chap. 19, Registers and Receivers are “authorized to charge and receive the same compensation or per-centage for their services in locating all Military Bounty Land Warrants issued since the 11th February, 1847, as they are entitled to, by law, for the sales of the public lands for *cash* at the rate of one dollar and twenty-five cents per acre.”

General Land Office Bounty Land Circular of 3d May, 1855, (see Title 10,) contains the tariff in each case allowed for locations of such warrants ; which, of course, embraces the locations of pre-emptors.

The following fees are chargeable by the land officers, and the several amounts must be paid at the time of location :

For a 40-acre warrant, 50 cents each to the Register and Receiver—total	\$1 00
For a 60-acre warrant, 75 cents “ “ “ “	1 50
For an 80-acre warrant, \$1 “ “ “ “	2 00
For a 120-acre warrant, \$1 50 “ “ “ “	3 00
For a 160-acre warrant, \$2 “ “ “ “	4 00

3d. By the act of 12th June, 1840, chap. 35, the district land officers are required to administer any oath, requisite under law, in connection with the entry or purchase of any tract of land ; but it is thereby declared that they “shall not, directly or indirectly, charge or receive any compensation for administering such oaths.”

You are requested to acknowledge the receipt of this communication, and enjoined strictly to observe its requirements.

Very respectfully, your obedient servant,

THOS. A. HENDRICKS, Commissioner.

Register and Receiver.

No. 416.

Pre-emption Acts 1841 and 1843.

GENERAL LAND OFFICE,
December 3, 1856.

Gentlemen:—By the 4th section of the Act of the 3d of March, 1843, (No. 72,) it is declared, that, “where an individual has filed, under the late pre-emption law, (1841,) his declaration of intention to claim the benefits of said law for one tract of land, it shall not be lawful for the same individual, at any future time, to file a second declaration for another tract.”

This prohibition is held by the Department to extend to *both* classes of lands, *un-offered* and such as are *subject to private entry*.

Where a claimant, however, of either class of lands, files a declaration which may prove to be *invalid* in consequence of the land applied for not being open to pre-emption, or by the determination against him, as a conflicting claimant, or from any other similar cause, which would have prevented him from consummating a pre-emption under such declaration—such illegal filing will be treated as a *nullity* and as no inhibition to his subsequently filing a legal and proper declaration for the same tract, should it become liable to pre-emption, or for any other land; it being the purpose of the law to allow a claimant a *pre-emption* upon one tract, and nothing more, and also to prevent declarations from being presented or filed where the intention of establishing a pre-emption is not *bona fide*.

Respectfully, your obedient servant,

THOS. A. HENDRICKS, Commissioner.

Register and Receiver at ———.

No. 417.

Pre-emption Appeal.

GENERAL LAND OFFICE,
August 11, 1858.

Gentlemen:—By the 10th section of an act of Congress approved 12th June, 1858, (No. 342,) the right of appeal, as heretofore provided by the Act of 1841, (No. 48,) to the Secretary of the Interior, from decisions of the district officers in contested pre-emption cases, now lies to the Commissioner of the General Land Office, whose decision shall be final unless appeal therefrom be taken to the Secretary of the Interior. Whenever, therefore, a party in such case shall enter his appeal through your office from the decision of this Office, such appeal will be held and regarded by you as a supersedeas against all further proceedings until such appeal has been determined, and you notified thereof, by this Office.

A party may appeal through your office, or directly by communication to this Office. If he choose the former mode, it is your duty to transmit his appeal without delay to this Office.

Respectfully, &c.,

THOS. A. HENDRICKS, Commissioner.

———, Register and Receiver.

No. 418.

Regulations in Reference to Appeals.

GENERAL LAND OFFICE,
January 24, 1859.

The following regulations are established by authority of the Secretary of the Interior, communicated to this Office in his letter of 21st instant, in relation to appeals to his Department proper, and will be observed and enforced from and after this date.

In every case when an appeal may hereafter be taken from the decision of this Office, the party appealing, or his attorney, will be required to notify the Office in writing of the points of exception to its action.

An opportunity will also be afforded to other parties interested in the case to be heard, if desired, and a reasonable time will be allowed.

All parties to such appeals will be required to file in this Office all arguments and documents of whatever character, before the cases are submitted to the Department, in order that they may be referred to and considered in our report to the Secretary, if deemed expedient.

In submitting cases on appeal, particular care will be taken to state the question or questions at issue and the grounds of appeal, and the action of the Department will be confined to those questions *alone*, unless sufficient cause should appear for looking beyond them.

THOS. A. HENDRICKS,
Commissioner of the General Land Office.

OPINIONS OF ATTORNEY-GENERAL.

No. 419.

Settlers upon the public lands must comply with the conditions of the land laws, in order to avail themselves of the privilege of pre-emption. They must give the written notice of their settlement and intention to claim the right of pre-emption, within thirty days from the date of their entering personally on the land, with the intention of settling there. They must also inhabit, improve, build, pay, and make proof, within twelve months, to be entitled to preference over those who may have entered the same lands at the land office.

ATTORNEY-GENERAL'S OFFICE,
April 25, 1846.

Sir:—I have examined the question presented in the report of the Commissioner of the General Land Office of the 25th March, ultimo, arising on the conflicting claims of Abraham Brauley, and Andrew Mullasky and Charles Maddy—the former under the pre-emption law of 4th September, 1841, (No. 48,) and the two last by entries at private sale, to a portion of the public lands mentioned.

The question is, from what point of time is the period of thirty days to be computed, within which a person intending to exercise the right of pre-emption, is to give written notice? The Commissioner has decided that the count commences from the date of the settler's entering on the lands and cutting timber to make the improvement required by law: the claimant, Brauley, contends that it ought not to commence until he had made it his abiding place by sleeping on the premises.

The 10th section of the Act of 4th September, 1841, gives the right of

pre-emption on such of the public lands as are liable to entry at private sale, subject to certain conditions. These conditions are specified in that and the subsequent sections of the law; but reference to the 12th and 15th only will be made in consideration of this question. A settlement must be made, and notice of an intention to purchase the lands as a pre-emptor, must be given within thirty days from the date of such settlement. The settler must inhabit and improve the same, and must erect a dwelling thereon, to entitle him to the privilege: and, to perfect his title he is allowed twelve months from the date of such settlement to exhibit proof that he has complied with the conditions, and to make payment. Settling, inhabiting, and improving, are all used as circumstances to be performed and proved; but they are not used as synonymous in their meaning.

The object of the law is beneficent: and it is entitled to a liberal construction in aid of the ends to be attained. But, to accomplish this, such a construction must be given as will protect the settler in his ultimate right, first, for thirty days from the date of his settlement, and secondly, for twelve months from the same time. The settler is entitled to this protection against the claims or entries of others. From the moment, therefore, that he enters in person on land open to such a claim, with the *animus manendi*, or rather with the intention of availing himself of the provisions of the act referred to, and does any act in execution of that intention, he is a settler. He must afterwards give his notice of intention, inhabit, improve, build his house, and make his proof and payment within the time stipulated, to perfect his right. But in every stage he is protected, until he fails on his part to comply with the conditions of the law. In this case, the Commissioner of the General Land Office appears to me to have decided correctly: that the date of Brauley's entering on the lands and cutting logs to build his house, with the purpose of purchasing as a pre-emptor, is the true date from which to commence the computation: and as he failed to give his notice within thirty days, and to make payment and proof within twelve months from that date, he is not entitled to preference over those who had entered the same lands at the land office.

I have the honor to be,

Sir, your obedient servant,

J. Y. MASON.

Hon. Robert J. Walker, Secretary of the Treasury.

No. 420.

A party, prima facie entitled to pre-emption, should not be precluded from receiving a patent for the land, by the mere allegation of his being an alien.

ATTORNEY GENERAL'S OFFICE,
May 27, 1852.

Sir:—By your letter of last month, my attention has been called to the communication of 19th June, 1849, to my predecessor in office, as not having been answered.

I find by the papers, that Barbara Ruff claimed a pre-emption to a tract of land under the Act of Congress of 4th September, 1841, (No. 48,) filed her declaration, made due proof, paid for the land, as far as depended on her complied with all the requirements, and did all that was in her power to do to complete her right of pre-emption. That Daniel Nugent,

a subsequent applicant to purchase the same land by private entry, insists on his posterior application to purchase, and founds his application to override the prior application of the pre-emptioner, on the allegation that she is of foreign birth and an alien.

Without deciding on the truth of this allegation, or its legal effect, my advice and opinion is, that it ought not to prevent the consummation of her title, and that a patent ought to be issued to the pre-emptioner, Barbara Ruff, who is *prima facie* entitled, and whose right is questioned, not for any irregularity in its acquisition, but on the intrinsic grounds of personal exceptions to her.

The issuing of a patent to her will not conclude the rights of Mr. Nugent; he may still assert them in a court of justice, and if well founded they will be sustained against the elder patent, as is shown by the decision of the Supreme Court in the case of *Lytle v. The State of Arkansas*, 9 Howard, 238.

Under the circumstances existing here, my opinion is that the patent ought not to be withheld from the woman; that she is fairly entitled to all the advantages that may result from her being defendant in a court of equity, if Mr. Nugent should choose to prosecute his claim before the judicial tribunal.

I am very respectfully,
Yours, &c.,
J. J. CRITTENDEN.

DECISIONS.

No. 421.

A pre-emption settlement and private purchase made on the same day, under given circumstances, the latter a bar to the pre-emption claim.

DEPARTMENT OF THE INTERIOR,
March 26, 1850.

The pre-emption entry by Ott, should be set aside, and the private entries by Yon, carried into grant. It appears that Mr. Yon, after inspecting the land, set out for the land office in order to enter it, the day before Mr. Ott commenced his settlement. His intention may have been known to Ott, and his going or sending to the land office was *indispensable*, to enable him to enter the land. This the pre-emptor was not required to do, and it would be unjust to allow him to take advantage of this and step in and defeat the purchaser. But in this case it appears that Ott commenced his settlement the day after Yon had started to the Land Office, being the same day that Yon completed his entries, so that in equity and justice, Yon was one day in advance of Ott, in his endeavors to secure the land, and had in fact entered into a *contract* which was binding upon *him*, while the pre-emptor had done nothing from which he could not recede at pleasure, and as the law takes no cognizance of the fraction of a day, the private entries made and completed the same day on which Ott settled, are under the circumstances, a good and valid bar to the pre-emption claim.

Very, &c.,
T. EWING, Secretary.

Commissioner of the General Land Office.

No. 422.

The execution by a pre-emption claimant, of a deed of trust, for the benefit of his wife, for more than three hundred and twenty acres, will not remove his disqualification.

DEPARTMENT OF THE INTERIOR,
January 30, 1852.

I have examined the question submitted with your letter of the 20th instant, and concur with you in the opinion that the execution of a deed of trust for more than three hundred and twenty acres of land by a person claiming the right of pre-emption under the Act of 4th September, 1841, (No. 48,) for the benefit of his wife, with a clause authorizing the wife to sell the land, does not so divest the claimant of the ownership of the lands therein described as to bring him within the provisions of the said Act of 1841, which expressly excludes from its benefits every person who is the "proprietor of three hundred and twenty acres of land in any State or Territory of the United States," or who shall quit or abandon his residence on his own land to reside on the public land in the same State or Territory.

Very, &c.,

A. H. H. STUART, Secretary.

Commissioner of the General Land Office.

No. 423.

Pre-emption cases pending before the Department, involving claims to land about to be "offered at public sale," not considered as included in the proclamation.

GENERAL LAND OFFICE,
October 9, 1855.

On the 27th August last, this Office decided adverse to the claim by pre-emption of Edward Murphy to lot 5, and the south half, southwest quarter, section 25, township 29, range 24 west, and in favor of that of Silas Bigelow, contestant, to the south half, southwest quarter of same section, of which decision you were duly notified in letter of same date. On the 19th ult., Mr. Murphy, by his attorney, David Cooper, Esq., took an appeal from the decision of this Office, to the Hon. Secretary of the Interior, and the case is now before him for consideration. As the tract claimed by Mr. Murphy is included in proclamation, No. 545, dated September 22, 1855, and is directed to be offered at public sale, commencing on the 22d of October next, and in view of the fact that Mr. Murphy's claim is yet undecided by the Secretary, you are hereby directed to withhold lot No. 5, or that portion of the claim not included in Mr. Bigelow's entry, from sale, until otherwise ordered by this Office.

Very respectfully, &c.,

JOS. S. WILSON, Acting Commissioner.

—, Register and Receiver at Minneapolis, Min.

Approved by Secretary McClelland, 10th October, 1855.

No. 424.

An assignment of a Pre-emption right will not be recognized by the Department.

DEPARTMENT OF THE INTERIOR,
November 29, 1855.

I herewith return the papers in the conflicting pre-emption claim of Edward Patten and Josiah Burwell, for certain land in the Minneapolis District, Minnesota Territory, &c., &c.

It would seem that the appeal from the action in reference to the claim of Patten, proceeds from an attorney of a party claiming an interest in the land, by virtue of an assignment from Patten, and such an assignment is found among the papers. As the law of 1841, (No. 48,) declares all assignments, prior to the issuing of the patent, *null and void*, said assignment has no *status* before the Department, and in all such cases, the assignment when received at your office, should be forthwith returned to the party, and not placed in your files, thereby giving color to such a claim.

R. McCLELLAND, Secretary.

Commissioner of the General Land Office.

No. 425.

A party who filed a declaration of citizenship before the inception of an adverse right, entitled to pre-emption. Case of Fink v. Harris.

DEPARTMENT OF THE INTERIOR,
August 20, 1857.

In regard to the qualification of Fink to acquire a pre-emption right, the certified copy of his declaration of intention to become a citizen of the United States, shows that said declaration was made on the 23d day of April, 1855, which brought him within the provisions of the law, prior to filing his declaratory statement, and prior to the date of any adverse settlement. The entry of Fink will hold the land against the evidence now filed to impeach it, which is not conclusive.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 426.

The mother of a pre-emption claimant, not having consummated her citizenship before he attained his majority, and he never having been naturalized, his claim rejected.

GENERAL LAND OFFICE,
November 25, 1857.

Sir:—I have the honor to present upon appeal, the papers, and report of the Register and Receiver in the case of David T. Jones, applicant, and Daniel L. Williams contestant, for the east half, &c., in the Faribault, Minnesota District.

The testimony shows priority of settlement in Daniel L. Williams, the contestant and appellant, and that he is an illegitimate son of Winfred T.

Williams, a woman of foreign birth, who brought him to the United States while a minor. She declared her intention to become a citizen of the United States on 18th December, 1856. The contestant has never declared his intention to become a citizen, neither has his mother consummated her citizenship. It is contended that Williams being a minor when his mother brought him to the United States, and that she having filed her declaration of intention, these facts confer upon him the right of pre-emption.

This is the point in the case; is Williams, being of foreign birth, of the class contemplated by the Act of 4th September, 1841? (No. 48.)

The testimony shows that he is not. I can find no provision in any of the naturalization laws now in force, that would confer on him the right of pre-emption, in virtue of his mother's filing her declaration of intention. I therefore recommend that the decision of the Register and Receiver, adverse to Williams' right be affirmed, and that Jones, the applicant, being the first settler after Williams, be allowed to make proof and payment for the land in dispute, and to enter the same upon taking the affidavit prescribed by law, and in all other respects, showing a full compliance with its provisions and requirements.

With great respect, your obedient servant,

THOS. A. HENDRICKS, Commissioner.

Hon. Jacob Thompson, Secretary of the Interior.

No. 427.

Where no doubt could exist as to the tract which a settler intended to claim, the building of his house a short distance over the line, if afterwards removed on the land, will not be fatal to the claim.

DEPARTMENT OF THE INTERIOR,
March 13, 1858.

I herewith return the papers pertaining to the conflicting pre-emption claims of George W. Martin, John W. Johnson and Susan Hart, to the southeast quarter section 21, township 18, range 12, from the Omaha, N. T., Land Office, which papers were received with your letter of the 29th of December last.

Said George W. Martin has established no right to the land in controversy. The settlement and application of said Johnson were subsequent to the application and intended settlement of Susan Hart. Her declaratory statement is dated the 19th of February, 1857, and her settlement is dated the 13th of the same month. It is true that her first house was not erected on the land,* but so soon as the mistake in location was discovered,

* Extract from the opinion of Attorney-General Butler, dated March 10, 1838, (vol. 3, p. 312.) "The case of the Messrs. Winchell, considered in my opinion of the 10th July last, was one of that description: the parties having *personally* cultivated public land, and having ploughed, fenced, and planted in corn twelve acres, and erected a house in which they both lived, (one being a single man and boarding with the other,) which house was found, by the survey subsequently made, to be one rod over the line of the quarter-sections cultivated and possessed by them, and on an adjoining section of public land. Its location on that section was evidently occasioned by a mistake as to the line; and no doubt whatever could exist as to the intent of the parties to make a settlement on the particular quarter-sections which they claimed; and if a settlement on, and occupation of, such public lands was intended to be made by the claimant, and was also actually made by him, so far as the circumstances of his case reasonably required and allowed, then, according to the prin-

the dwelling house was fixed upon the land claimed by her. No doubt can exist as to her intent to make a settlement on the particular quarter-section which was described in her declaratory statement. Her subsequent compliance with the law, so far as the circumstances of the case reasonably allowed since her application was first filed, will cure the defect resulting from the mistake in the location of the house. The decision of the local land office, in favor of Johnson, is hereby reversed, and they will be instructed by you to permit said Susan Hart to complete her entry of the land she claims.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 428.

Where neither party has established a valid claim, and one of them failed to file in due time, he may be permitted to make a new claim, if otherwise a qualified pre-emptor.

Decision in the case of Jones v. Thompson.

DEPARTMENT OF THE INTERIOR,
June 8, 1858.

I agree with the Register and Receiver, that neither party has established a right of pre-emption to the land in dispute; and with regard to Jones, that the doubt with respect to his age, together with the absence of evidence of a bona fide intention on his part to acquire the land for his own use and benefit, would justify the rejection of his claim. As, however, the land is subject to pre-emption, as said Thompson has in no way forfeited his right to obtain the benefit of the pre-emption law, he may be permitted to date his settlement at any time prior to the inception of any adverse claim to the land, and upon his filing a declaratory statement therefor, within the time specified by law to make proof and payment for the same.

Very respectfully, &c.,

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 429.

Of settlers in the "Maison Rouge Grant," claiming the right of Pre-emption under the Act of 1853, no declaratory statement is required.

DEPARTMENT OF THE INTERIOR,
Washington, July 7, 1858.

Sir:—Your report of the 25th instant, presented to me on his appeal—the case of Francis Layaux—whose pre-emption entry of one hundred and sixty acres of land, lying within what is known as the Maison Rouge grant, was admitted June 12, 1855, by the Register and Receiver at Monroe, Louisiana, under the Act of Congress of 3d March, 1853, (No. 222,) but which

principles of my former opinions and to my present views, the claim should be allowed, although there was no actual residence on the lands. In other words, in the case just described, I should not consider actual residence or inhabitancy on the lands an essential requisite to the right of pre-emption."

has been ordered to be cancelled, for the reason that no declaratory statement was filed by the claimant within three months after the date of the law mentioned.

After consideration, I am of the opinion that individuals, who were residing on said tract of land, at the date of the passage of the Act of 3d March, 1853, may avail themselves of their preference right, to purchase at any time before the lands are offered for public sale; and that of such persons, the law requires no declaratory statement.

The action of the local officers, in admitting the entry, is, therefore, sustained, and is hereby affirmed. The papers in the case are now transmitted to your office.

Very respectfully, your obedient servant,

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 430.

Under the act extending the pre-emption law to Minnesota, if a division cannot be made, a joint entry may be permitted.

DEPARTMENT OF THE INTERIOR,
January 8, 1858.

Having considered the testimony and the facts presented in the case of *Laughton v. Cadwell*, I am of the opinion, that under the Act of August 4, 1854, (No. 255,) extending the right of pre-emption to unsurveyed lands in Minnesota, which provides, "that if when said lands are surveyed, it is found that two or more persons have settled upon the same quarter-section, each shall be permitted to enter his improvements, as near as may be by legal subdivisions;" the said parties, Laughton and Cadwell, should each be allowed to enter one forty-acre subdivision of the tract in dispute, if such a division thereof can be made, as to give to each his principal improvements; otherwise, unless the parties can agree upon a more satisfactory mode of division, exact justice would seem to require, that they be allowed to enter jointly the whole half-quarter section in dispute; and in addition, each may be allowed to enter the contiguous uncontested tracts claimed by him.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 431.

One party refusing to make a selection or a joint entry, the other may make choice of the disputed subdivisions.

DEPARTMENT OF THE INTERIOR,
September 8, 1858.

The letter of the Register and Receiver at St. Cloud, Minnesota, in relation to the contested pre-emption claims of Cadwell and Laughton, which letters accompanied your communications of the 22d and 23d of July last, are herewith returned.

As the said claimants have failed to comply with the decision, rendered on the 8th of January last, by making a joint entry of the disputed tract, or by agreeing to a more satisfactory mode of division, and as the proposition made by Mr. Laughton, that each claimant should "enter one hundred and twenty acres, giving Cadwell choice of lots in the disputed portion," appears to be reasonable and just, the Register and Receiver may be instructed to permit the parties to enter the land in accordance therewith. If, however, said Cadwell shall refuse to make choice of lots, then said Laughton may be allowed to enter in connection with the eighty-acre tract not in controversy, either of the forty-acre subdivisions in dispute he may designate.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 432.

Where conflicting settlements in Minnesota were made before survey, one party will not be permitted to deprive the other of a subdivision upon which the former had no improvements.

DEPARTMENT OF THE INTERIOR,
September 8, 1858.

The papers received with your letter of the 31st July last, in the contested pre-emption case between E. C. Agnew, J. Lynch, D. Ryan and M. Ryan, from the Minneapolis, Minnesota, Land Office, are herewith returned.

The settlements of Lynch and D. Ryan, were made prior to the survey of the body of lands of which the tract in controversy constitutes a part. The Land Office was not opened until about October, 1854, more than a year after said settlements. Agnew's settlement is claimed and proven to have been made on the 9th December, 1853. The declaratory statements of Agnew, Lynch and Ryan are dated on the same day, to wit, the 20th October, 1854. Lynch however subsequently filed two other statements, but he must be restricted to the tract first declared for. D. Ryan's residence and principal improvements are on the west half of northeast quarter section 30, township 28, range 22, which he is entitled to enter. It does not appear that he had made on the east half of the northwest quarter, any such improvements as would indicate an intention on his part to embrace that subdivision in his claim, prior to the time Agnew became a qualified pre-emptor,* and was residing upon the land. The latter, it is shown, had made valuable improvements thereon, and moreover appears to have settled in good faith. Ryan's filing being of the same date with Agnew's, the latter could not have ascertained from that source, that he was encroaching upon the claim of the former. Although the Act of 1854, (No. 255,) was not in force at the date of said settlement, yet this case may be legally and equitably decided in the spirit thereof, by allowing each claimant to make such an entry as will embrace his principal improvements. Agnew will be permitted to enter the east half, northwest quarter, and Lynch and Ryan as above indicated.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

* By filing his naturalization papers.

No. 433.

A purchaser of lands in the "Maison Rouge Grant," Louisiana, under D. W. Coxe, is entitled, although the purchase-money had not been paid.

DEPARTMENT OF THE INTERIOR,
September 25, 1858.

Having considered the evidence, arguments and reports in the case involving the pre-emption claim of the heirs and legal representatives of George W. Copley, deceased, to certain lands situated within the limit of the Maison Rouge grant, subject to sale at Monroe, Louisiana, contested by Dorcas Dinkgrave, I herewith return the papers.

The title of said Copley is derived through several intermediate purchasers from Daniel W. Coxe. Under that title, Copley and his legal representatives have held the land, now claimed by pre-emption, from the year 1844 to the present time; no other person who has been in possession of said land under title derived from Coxe, now asserts any claim thereto. The estate of Copley is liable for the original purchase-money, "if any such liability has accrued," or if any such debt exists. The heirs and legal representatives of said Copley being in possession of said land, are the only parties who can have any claim thereto under the Act of January 27, 1851. (No. 184.)

The land was first sold as one tract, and notwithstanding the division thereof, before Copley's purchase, he having acquired the title to the whole, the cultivation and improvement of any part thereof, will authorize the entry of the whole tract so purchased. Your decision, approving the action of the Register and Receiver, permitting the entry of said land by the heirs and legal representatives of said Copley, is hereby affirmed.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 434.

A Pre-emption Claimant deterred by threats, &c., from prosecuting his improvements, does not lose his right of pre-emption.

DEPARTMENT OF THE INTERIOR,
September 23, 1858.

Having considered the case involving the contested pre-emption claim of Mark E. Taylor and Peter Cummings, to certain lands in the Kickapoo District, Kansas Territory, I am of the opinion that said Cummings being deterred by threats and fears of bodily harm, from continuing his settlement and improvement, should not be held responsible for his failure to do so.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 435.

The sale of a claim to a tract of land previously occupied, will disqualify the party from establishing a right of pre-emption.

DEPARTMENT OF THE INTERIOR,
October 27, 1858.

The papers received with your letter of the 6th instant, appertaining to the pre-emption contest between Henry Judah, Mary Barker and William McVey, from the Kickapoo, Kansas Territory, Land Office, are herewith returned.

The evidence concerning the sale, by said Judah, to one Hazzard, of his claim to the tract of land, for which said Judah had filed a declaratory statement, before claiming the land now in controversy, shows that the said Judah actually sold his claim thereto, and not merely his improvements on the same. He has thus disqualified himself as a pre-emption claimant, and the filing by him of a second declaration for the tract now claimed, is invalid.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 436.

Where satisfactory proof of fraud existed, a Pre-emption Claim disallowed.

DEPARTMENT OF THE INTERIOR,
February 10, 1859.

Your letter of the 3d of November last, and the papers therewith enclosed, appertaining to the pre-emption contest between Lucius Collar and George Lake, from the Menasha, Wisconsin, Land Office, has been considered.

I concur in your views, as to the invalidity of the pre-emption claim of said Collar, but dissent from your conclusions in favor of the right of said Lake. The land in controversy, as I am advised, was not subject to private entry at the date of Lake's warrant location upon it; and it must be determined whether he has established a valid right of pre-emption thereto. The witness, Calkins, upon whose evidence the pre-emption entry of Lake was allowed, swears that he employed said Lake to pre-empt the land for Darkin. This is corroborated by the facts that said Darkin admits that he furnished the warrant to Lake which was located upon the land, and that said Darkin actually purchased Lake's claim to the land, on the very day upon which Lake's location was admitted. The claim of Lake is therefore regarded as unfounded and fraudulent, and his location must be set aside.

The papers are herewith returned.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 437.

Where a Pre-emption Claimant settled on unoffered lands, but did not make proof and payment before the land was proclaimed, no relief could be afforded him.

DEPARTMENT OF THE INTERIOR,
Washington, July 5, 1859.

Sir:—In the case of Jonathan B. Fisher, appealed by his attorney, G. Bouck, Esq., of Oshkosh, Wisconsin, from your decision of the 28th May last, I cannot do otherwise than affirm the decision.

It appears that Mr. Fisher settled upon unoffered land, but did not come forward and tender his proof and payment before the day on which the land was proclaimed for sale; and that the tract on which he had settled was sold at public sale on the 3d of May, 1859, pursuant to the President's proclamation, No. 628, of December 24, 1858.

Under these circumstances, this Department has no power to afford relief to Mr. Fisher. The certificate of filing, which was issued to him by the local officers, in which, as it is alleged, it was indicated that Mr. Fisher would be entitled to one year from the date of the legal confirmation of his settlement, is not an official paper which the law recognizes,—and parties who rely on the contents of such a paper, do so at their peril.

It is proper to remark, that in the present case, there is no evidence, or indication of any collusion between the party who has purchased at public sale, and the local officers, for the purpose of defeating Fisher's pre-emption. It was, however, an act of culpable carelessness, if they informed Mr. Fisher that he had settled on land which had been offered at public sale, when the fact was otherwise.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 438.

A Pre-emption Claimant, who first claimed less than one hundred and sixty acres, believing that there was no vacant land adjoining, may be permitted to file for such, and embrace the additional quantity in his claim.

DEPARTMENT OF THE INTERIOR,
August 17, 1859.

Sir:—The papers in the case of *Bryan v. Whittles*, from the Nebraska City Land Office, and which were received with your letter of the 12th May last, are now returned.

A former contest between these parties, for the right of pre-emption to eighty acres of the land now in dispute, was decided by this Department adversely to the said Bryan, for the reason that he was "not the head of a family, within the meaning of the law." The opinion that this assumed character was a mere pretence, by which to evade the law, is fortified by facts which have been since disclosed. This boy's father, who resides on an adjoining tract, is the head of the family to which he belongs. It appears, that after the decision of the Department before mentioned, by which it was held that said Whittles should be permitted to enter the land he claimed, "upon his establishing his rights thereto, as a qualified and *bona fide* pre-emptor," he included in his declaratory statement the other eighty, which had been embraced in Bryan's claim. That eighty was

vacant public land, and as the claimant, Whittles, had failed to file for more than a half quarter-section, no objection is perceived to allowing him to add thereto a sufficient quantity to make one hundred and sixty acres, the quantity which the law allows a pre-emptor to acquire, if no adverse rights had attached to the additional tract claimed. His right would begin from the date of such notice. This principle has been recognized and adopted by several decisions of the Department. But in this case, certain statements have been made, which, if substantiated by proof, would indicate an abandonment by Whittles, of his house upon the land, and that he has made his home elsewhere. He should be required to produce proof of his compliance with the law, particularly as to inhabitancy and improvement, from the date of his first occupancy of the land, until he offers to enter. Otherwise, his claim should be rejected.

Very respectfully, your obedient servant,

MOSES KELLY, Acting Secretary.

Acting Commissioner of the General Land Office.

No. 439.

Any transfer of the right of Pre-emption will be treated as absolutely void. The action of the Register and Receiver, in admitting an entry, is not final in this class of cases.

DEPARTMENT OF THE INTERIOR,
September 22, 1859.

Sir:—Upon a revision of the case of Alexander S. Johnson and John Denny, conflicting pre-emption claimants of a tract of land in the Leecompton District, Kansas Territory, I am satisfied that said Denny has failed to show a valid right to the land, and that his entry should have been cancelled.

The irregularity in the proceedings of the local officers, which consisted in granting a re-hearing of the case without instructions, was rendered immaterial by the appeal, and your subsequent action in the case.

Two points, raised by the counsel of Denny, will be briefly considered. The first is, that a *bona fide* purchaser for a valuable consideration, of the interest of said Denny, is protected by the pre-emption law. A sufficient reply to this is, that the law provides that all assignments and transfers of the right of pre-emption, "*prior to the issuing of the patent*, shall be null and void." This Department will not, therefore, recognize or protect the claim of an assignee of a pre-emption right. That right is not regarded by the law as complete until the patent issues, and it can only be consummated so far as our action extends in the name and for the benefit of the pre-emptor. Any transfer thereof will be treated as a nullity, and as absolutely void.

The other ground of exception is, "That the Government of the United States has received the compensation demanded of Denny for the land, and unless some fraud be charged on Denny, and evidence to sustain that fraud be adduced, the government has no right to cancel the contract," &c. The answer to this point is, that as questions arising between different settlers are appealable, the action of the Register and Receiver is not final, and the Government is not bound thereby in cases of appeal.

Very respectfully,

J. THOMPSON, Secretary.

Acting Commissioner of the General Land Office.

No. 440.

Where two parties settled prior to the survey of the land, a division of the same, so that each can obtain his principal improvements, may be made in a given case in Kansas Territory.

DEPARTMENT OF THE INTERIOR,
September 22, 1859.

Sir:—The case of *Roosa v. Schepp*, from the Land Office at Ogden, Kansas Territory, has been duly considered, and the papers which were received with your letter of the 31st ultimo, are now returned.

Both parties claim the right of pre-emption to a certain eighty acre tract of land, each claiming, besides, an additional half quarter-section. It appears that both settled in the month of July, 1854, prior to the survey of the lands claimed, and that after the survey, they were found occupying the same quarter-section.

Both are *bona fide* settlers, and to deprive either of his home, would work a great hardship. The question of priority of settlement is one of doubt, and is difficult to determine. The local officers have decided that Schepp was the first settler, and you have decided that Roosa made the first valid settlement. It is presumed that both claimants have valuable improvements on this eighty, and if, by allowing each to enter one forty-acre subdivision thereof, he can thus secure his principal improvements, justice, and the spirit of the law in similar cases, seem to require that they should be permitted to divide the land in the manner indicated. If this cannot be done, a joint entry of the tract in dispute may be allowed.

The Register and Receiver will report their proceedings, in pursuance of the foregoing decision, to your office.

Very respectfully,

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 441.

A member of a Claim Club, organized for the purpose of illegally appropriating and selling public lands, will be held to the strictest proof of honest intent, when asserting an individual claim.

DEPARTMENT OF THE INTERIOR,
September 28, 1859.

Sir:—I have considered the case submitted by your letter of the 31st ultimo, involving the pre-emption claim of George Stump and William Jacobs, to a tract of land in the Lecompton Kansas district.

Said Jacobs alleges settlement on the 15th July, 1857, on which day he appears to have hauled four logs on the land in controversy. Some other meagre improvements were made by his direction, before the settlement of Stump commenced, to wit, on the 29th August, 1857, on which day Stump went on the land with his family, and established his home thereon.

It is clearly proven, that said Jacobs was a member of a claim club, which had been organized for the purpose of selecting tracts of land, and selling the same, or their pretended rights thereto, to actual settlers. That several claims were sold by said club, from which sales Jacobs derived a portion of the profits. That the land now in controversy was, at one time, selected

by said club, but afterwards abandoned. This complicity of said Jacobs with others, engaged in an unauthorized appropriation of, and speculation in, the public lands, and his acts as a member of such organization, render it proper that the strictest rules of the law should be applied in adjudicating his alleged right; and, as he was interested in selecting and appropriating for the benefit of the club, other lands, if not this specific tract, and as the club had encumbered certain lands in such a manner as to induce settlers to buy out the club claim, stronger proof of the honest intent of said claimant must be produced, than would be required in ordinary cases.

The means employed by the club to select lands are not known, but it is fairly presumable that they simply hauled a few logs on the different tracts, or made other slight improvements thereon, by which it was considered that their right would attach to the same. In this way, every quarter-section in that region might have been illegally held, and one or another member of the club might be able to show improvements on any particular tract, and thus defeat subsequent *bona fide* settlers. Had either of the tracts sold by the club been settled upon by an adverse claimant, doubtless some member thereof would have been able to produce evidence of prior improvement. A system so well adapted to cloak frauds, and one so opposed to law and justice, can receive no countenance or encouragement from this Department. But the testimony in the case does not satisfy my mind that said Jacobs ever manifested an intention to claim this land individually and for his own use, prior to the date of the adverse settlement. His first acts are not sufficiently connected with his subsequent improvements, and as no actual inhabitancy is shown by him before the case was heard by the Register and Receiver, I am the more fully satisfied that his claim should be rejected.

Said Stump, upon complying with all the requirements of the law, may be permitted to enter the land claimed by him.

Very respectfully,

J. THOMPSON, Secretary.

Acting Commissioner of the General Land Office.

No. 442.

Where a patent issued for a tract of land to which a prior Pre-emption right was asserted, an investigation ordered.

DEPARTMENT OF THE INTERIOR,
September 29, 1859.

Sir:—In relation to the claim, by pre-emption, of Charles Spurlock to a tract of land in the Lecompton, Kansas, district, which conflicts with a Wyandott float location, in the name of George Armstrong, you report, that the pre-emption settlement of said Spurlock was anterior to the said float location, and that you refused the application for a new hearing in said case, made by the attorney of said pre-emption claimant, for the reason that the patent had issued to the other party, and that the case had therefore passed beyond the control and jurisdiction of your office. My opinion is, that the claim of said Spurlock should be investigated. You will accordingly remand the case to the local land officers, instructing them to notify all parties in interest, of a time and place when and where the claim of said Spurlock will be heard and examined, and to allow the adverse claimant of the land to cross-examine the witnesses of the pre-emptor, and to produce evidence in support of his rights, if he should see fit so to do. The Re-

gister and Receiver will then report their proceedings in the matter, and forward the testimony to your Bureau, and thereafter it may be determined whether said Spurlock is entitled to any relief in the premises, and if so, in what manner the same may be properly and legally afforded.

Very respectfully,

J. THOMPSON, Secretary.

Acting Commissioner of the General Land Office.

II. SETTLEMENTS AND DECLARATORY NOTICES.

No. 443.

Where there is but one Pre-emption Claimant, the date as well as the fact of pre-emption settlement is within the exclusive jurisdiction of the District Land Officers. A pre-emption right attaches from the date of settlement.

DEPARTMENT OF THE INTERIOR,
May 12, 1851.

In looking into the case of *Henry C. Gist v. Blackman and Fletcher Sullivan*, submitted with your letter of the 10th instant, I find that Gist is a pre-emptor, under the Act of 1841, (No. 48,) and that his right has been established to the satisfaction of the Register and Receiver; and that the Messrs. Sullivan, who are only purchasers at ordinary private sale, appeal from the decision on Gist's claim. In such a case, there is no appeal to this Department,* the law having authorized an appeal only in cases where "two or more persons have settled on the same quarter-section of land." The Act of 1841 requires that the applicant shall, within thirty days next succeeding the date of his settlement, file with the Register a "declaratory statement;" and that within twelve months from the date of such settlement, proof of settlement and cultivation shall be made to the satisfaction of the Register and Receiver. From their decision, as to the fact of settlement and cultivation, there is no appeal, except where two or more persons claim the right of pre-emption.† The date as well as the fact of settlement is within the exclusive jurisdiction of the District Land Officers, where there is but one pre-emption claimant, and any entry of the land at private sale, subsequent to the period established to their satisfaction as the date of settlement, must be regarded as illegal and void; as the pre-emption privilege or right, when once legally established must be regarded as attaching from the date of settlement. The papers submitted by you are herewith returned.

Very, &c.,

A. H. H. STUART, Secretary.

Commissioner of the General Land Office.

* See *Barnard's Heirs v. Ashley's Heirs*, 18 How. 43. Note, p. 357.

† Cases of this character may be suspended. (See No. 110.)

No. 444.

The first settler is entitled to the right of Pre-emption in preference to the first resident.

Extract from a letter of Commissioner Hendricks, of date
June 2, 1856.

"The commencement of the settlement, when made in good faith, and followed as in the case of Rice, by cutting timber for a house, and proceeding from day to day in procuring the materials, and progressing with the work as fast as circumstances would admit, until it was sufficiently furnished to move in with his family, and in which such settler has continued to reside until the day of the hearing, is, in my opinion, a compliance with the law, and gives him a preference over every other claimant, subsequently entering on the land, although such other claimant might succeed in erecting a house, and moving in, and becoming a resident and inhabitant of the tract, before the prior settler had finished his house and commenced his residence.

Very, &c.,

"T. A. HENDRICKS, Commissioner."

Reply to the foregoing.

DEPARTMENT OF THE INTERIOR,
June 4, 1856.

For the reasons assigned in your report of the case, the Department fully concurs in the views expressed by you, as to the right of the parties, &c.

R. M'CLELLAND, Secretary.

Commissioner of the General Land Office.

No. 445.

Land Officers are authorized to admit proofs of the bona fides of Pre-emption Claimants.

DEPARTMENT OF THE INTERIOR,
July 11, 1856.

I return herewith the papers in the case of Aaron Flickinger, John Kofer, Rensaleer Strong, and Thomas Lombard, submitted in your letter of 3d May last. I am of opinion, that the land officers are authorized to receive proofs of the *bona fides* of the claimant in a pre-emption case, and any evidence that will satisfy their minds, that this did not exist at the time of the administration of the affidavit required of the pre-emptor or afterwards, should be admitted. The object should be to execute the law according to its spirit, and to give its benefits to actual *bona fide* settlers, and not speculators.

In the present case, the testimony is conflicting upon the question of the character of Flickinger's original entry upon the land claimed by him, and the land officers, in determining that question, appear to have regarded the *weight of the evidence* in favor of Flickinger, although their judgment is not so clearly expressed as to divest it of all suspicion that the principles of the Circular of November 3, 1843, in regard to a claimant's affidavit, entered into the elements upon which their conclusions were based. I think it therefore best, that the case be remanded to them for examination and revision, so that substantial justice may be done in the premises.

R. M'CLELLAND, Secretary.

Commissioner of the General Land Office.

No. 446.

It is proper to admit evidence showing the intention of a Pre-emption Claimant in making settlement. Case of Flickinger v. Lombard, Klofer and Strong.

DEPARTMENT OF THE INTERIOR,
July 20, 1857.

In order to arrive at a correct conclusion as to the right of pre-emption arising between different settlers, under the Act of 4th September, 1841, it is proper to admit evidence showing the intention of the parties in settling upon and improving the land. It is sworn by three witnesses, in this case, that the claimant Flickinger, within a few months after his settlement, which he claims to have made on the 14th of June, 1854, stated in the hearing of each of them, that he held the claim for D. L. Fuller. Two of the witnesses testify that Flickinger told them that he was employed by Fuller at twenty-six dollars a month. Four witnesses testify to hearing him speak of his claim in the "Big Woods," during the time he was occupying the land in controversy. It is also in evidence that Flickinger stated, under oath, on a trial before a Justice of the Peace, that he and Fuller were to go "snacks in the claim."

From the testimony in this case, I am of opinion that Flickinger is not entitled to the land claimed. The claim of Klofer is considered valid.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 447.

A bona fide settler may be allowed to amend his Declaratory Statement and make a new settlement in case no valid adverse claim exists. Decision in the case of Murray v. Bissell and Sweets.

DEPARTMENT OF THE INTERIOR,
May 20, 1857.

The land officers at Minneapolis, upon examination of the several applications, decided adversely to all of them; but to Murray's only because he had failed to file his declaratory statement within three months after the date of his settlement. Their decision was affirmed by this Department, but inasmuch as Murray was regarded as a *bona fide* settler, while S. K. and H. P. Sweet appeared to be intruders upon the land, seeking, by a merely nominal compliance with the provisions of the act, to avail themselves of the improvements made by Murray, the land officers were instructed by your letter of 3d July last to inform him how he could perfect his claim and secure his location. Acting under these instructions he made a new settlement, and took the other steps required of him, when his claim was again contested to lot 9 by the filing (on the 28th November, 1856,) of an application for the purchase of that lot as a town site. The testimony, however, conclusively establishes the fact, that aside from the store alleged to have been kept upon the lot by one of the Sweets, the location was used for agricultural purposes, and for no other; the only actual *bona fide* settler thereon being D. C. Murray; and to allow the application of the town entry would be establishing a precedent by which any person, having a valid pre-emption claim, could easily be deprived of his rights by any contestant who should choose to open a store upon his

improvements, and claim the same for purposes of trade. Murray is entitled to the land in controversy upon making payment therefor.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 448.

A claimant's personal presence and agency necessary to constitute a valid Pre-emption right. Case of Mullin v. Twitchell.

July 15, 1857.

I am of the opinion that the right to enter said tract, on the evidence produced, clearly appears to be in Susan Twitchell, she having made the first settlement. The decision of the district officers is, therefore, reversed. The act on which they seem to rely as giving priority of settlement to Mullin, was the act of Elias Hobbs, who, on the 8th of January, 1857, entered and "cut brush on said land for him," Mullin. It is also proved that Mullin worked on the land "off and on, ever since the 8th of January, 1857," and "there was no interval longer than one week."

The first date that it is clearly proved that Mullin was seen by a witness at work in person on the land, was some three weeks prior to the hearing before the district officers, February 26; though some work was seen January 24, probably done by him. Mrs. Twitchell entered [settled] on the 14th January, and immediately commenced her improvements, and moved upon the land on the 24th of the same month. On the 14th she had the land examined by three persons, who, as one of them testifies, saw no evidences of recent claim or improvement. The acts of Hobbs, on the 8th of January, being no part of the "settlement in person" by Mullin, that of Mrs. Twitchell is the first settlement in order of time, and it is on this ground alone my decision is based.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 449.

Pre-emptions in Minnesota. Priority of settlement does not extend to a date anterior to survey.

DEPARTMENT OF THE INTERIOR,

July 22, 1857.

Under the Act of August 4, 1854, (No. 255,) I do not regard the question of priority of settlement as extending to a date anterior to survey, in favor of a party who seeks to cross the lines of the quarter-section on which are his residence and principal improvements, to take a fraction from another, who, likewise, settled before survey, and who is found by the survey on another quarter-section.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 450.

The Register and Receiver instructed to consider all the testimony as to whether the Pre-emption Claimant settled for speculative purposes.

GENERAL LAND OFFICE,
August 12, 1857.

Sir :—I have the honor to submit herewith, all the papers in the pre-emption case of Adam Steinbaugh, cash entry No. 403, in the Minneapolis, M. T., District, said entry being contested by W. T. Swanwick.

Steinbaugh offered proof, and was permitted to enter lots 3, 4 and 8, in section 32, township 116, range 22, west, on the 3d of August, 1855. In September following, *ex parte* affidavits (herewith) marked "A," "B," and "C," were received at this Office, setting forth that the entry of said Steinbaugh was fraudulent, and requesting a re-investigation of the case. It was accordingly remanded to the District Office in a letter of 13th October, 1855, and a rehearing was had in March, 1856. The evidence elicited is exceedingly voluminous, and in many particulars conflicting; but the Register and Receiver, in their letter, "D," express the opinion that the allegations of fraud against Steinbaugh, "are not sustained by the proof submitted." They state, however, that they did not take into consideration any testimony as to whether Steinbaugh settled upon and improved said tract to sell the same on speculation; or whether he had made any agreement or contract by which the title he might obtain thereto should enure to any other person than himself,—as, by the Circular of Nov. 11, 1843, "the affidavit of the claimant on these points, is conclusive on the land office, a false swearing, as to either of them, being the proper subject of an examination by the judicial tribunals." There appeared, however, in the body of the evidence, positive testimony that Steinbaugh had made an agreement, or expressed his determination to sell his claim and leave the country, prior to proving up, and that, *on the very day of proving up and making entry*, he deeded the land in fee simple to Gilbert G. Griswold and James C. Farwell—the brother of Griswold having accompanied said Steinbaugh to the Land Office to obtain the deed. These facts appearing, and the late Secretary of the Interior having overruled the circular above quoted, in cases where evidence is offered during the investigation, going to show the *mala fides* of the claimant, (see Hon. Sec.'s letter of July 11, 1856, (No. 445,) to this Office,) the papers in this case were returned to the district officers, and they were directed to take into consideration *all* the testimony produced, and report to this Office accordingly. Said papers were sent back by the Register and Receiver in their letter of 1st December last, (herewith,) in which they express the opinion that when Steinbaugh "made his said pre-emption entry, he did not do so as a *bona fide* pre-emptor, but to sell the same on speculation," and in a subsequent letter, "E," they state that they "are of the joint opinion that the entry of Steinbaugh should be cancelled."

I am convinced that Steinbaugh did not settle upon the land in question, "in good faith to appropriate it to his own exclusive use and benefit," but simply as a matter of speculation. I concur, therefore, in the last expressed opinion of the Register and Receiver, "that the entry of Steinbaugh should be cancelled."

With reference to Swanwick, I have to state that there is no evidence of any particular improvement made on the land in dispute by him, and our tract-books do not show that he has ever filed a declaratory statement for the same. A decision cannot, therefore, be rendered in his favor, but

I would recommend that the district officers be instructed to allow the *bona fide* settler, first in order, who has complied with the requirements of the law, to prove up and make entry of said land as a pre-emption. If, however, there be no settler upon the tract entitled to such right, said land will come under the class contemplated by the Act of 3d August, 1846, (No. 110,) and will be subject to disposal according to the provisions thereof.

I await your direction for further action in the premises.

With great respect,

Your obedient servant,

(Signed) THOS. A. HENDRICKS, Commissioner.

Hon. Jacob Thompson, Sec'y of Interior.

Affirmed by Sec'y Thompson, 7th November, 1857.

No. 451.

A settler in Minnesota has three months from the approval of the plat, to file notice, and a filing made prior to such approval will be regarded as a nullity.

GENERAL LAND OFFICE,
September 7, 1857.

Sir:—I have the honor to enclose herewith, the report of the Register and Receiver, with accompanying papers, in the pre-emption case of *Bangs v. Matthews*, each claiming lot 6, in section 14, township 108, range 27, west, Faribault, Minnesota Territory, District. The facts in the case are as follows:

Lyman Matthews, a citizen of the United States, a single man, &c., settled on the above tract, between the 10th and 15th of March, 1856, having purchased it from another settler. He fenced, cleared and planted a portion of the tract, erected a dwelling-house, moved into it, and lived in it five or six weeks, then moved into a house on the *same tract* which had been erected by the settler from whom he purchased the claim; continued to reside on the claim and improve it, up to the date of hearing.

Elijah K. Bangs laid claim to the same tract on the 20th of March, 1856, by "marking it off" with stakes and corner-posts. He subsequently erected a house, moved into it about the 3d of May, did some fencing, clearing, &c., and brought on a trial of the case on the 2d of June, following. Bangs is a citizen of the United States, and a single man, over twenty-one years of age.

At the close of the hearing, the *then* District officers decided adverse to Matthews, on the ground, as endorsed on the proof, that said "Matthews had previously filed a declaratory statement" on the public lands. They also decided in *favor* of Bangs, believing him to have complied with the law.

The papers in the case were improperly retained at the Land Office, as will be seen by reference to letters herewith enclosed, until the incoming of the new District offices, and on the 12th ultimo, they having taken the case into consideration, *reversed* the judgment of the former officers, and expressed their joint opinion in favor of Matthews. From this latter decision, Bangs appeals.

Upon an examination of the abstract of declaratory statements, and the plat of survey on file in this Office, I find that the declaration filed by Matthews, prior to his settlement upon the land in dispute with Bangs, and upon which the late District officers based their decision, was filed August 11, 1855, while the plat of survey of the township was not approved till

December 19, 1855. By the Act of 4th August, 1854, a settler upon unsurveyed lands in Minnesota, is required to file his declaration within *three months after* the approval and return of the survey to the district office; and I am disposed to regard a filing made *prior* to such approval and return as a nullity. Even if this were not so, the land embraced in the filing of 11th August, 1855, was not laterally contiguous, as required, and was on that account illegal and void. Such former filing was, therefore, no impediment to the subsequent pre-emption claim of Matthews, and his settlement having been first in order, and most in accordance with the spirit of the law of 1841, I have to express my concurrence in the views of the present Register and Receiver. I have to state that I regard the conduct of the present district officers, in reviewing and revising a decision of their predecessors, without authority from this Office to re-open the case, as extra-official, and that my decision in favor of Matthews is based upon the facts presented in the evidence, and upon the files and records of this Office, without official regard to the views expressed in their communication. I await your direction for further action in the premises.

With great respect,

Your obedient servant,

(Signed) THOS. A. HENDRICKS, Commissioner.

Hon. Jacob Thompson, Secretary of Interior.

Decision in favor of Matthews affirmed by Secretary Thompson, October 10, 1857.

No. 452.

A slight discrepancy between a Declaratory Statement and the proof in a given case, not material. Case of Wake v. Davidson.

DEPARTMENT OF THE INTERIOR,
October 13, 1857.

The discrepancy between the declaratory statement, in which the claimant, Wake, is styled a "single man over the age of twenty-one," and the proof, which shows him to be the head of a family consisting of himself and one child, is of no importance. He may have corresponded with both the one description and the other. The inferences or impressions of neighbors as to which of two persons of the same name was the claimant who originally settled upon the land, will not be allowed to outweigh or contradict the positive statement of a witness whose testimony is unimpeached.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 453.

In case of a bona fide settler, who was a minor when his settlement was made, becoming of age before an adverse claim arises, the former may amend his Declaratory Statement.

DEPARTMENT OF THE INTERIOR,
October 26, 1857.

In cases of this character, where the law has been substantially complied with, and the error or informality has arisen from mistake or ignorance,

and is *satisfactorily explained*, and where there is no adverse claimant, I am disposed to regard the legal pre-emptive settlement as commencing from the date when the party becomes a qualified pre-emptor. The claimant may therefore be permitted to amend his declaratory statement, dating his *legal* settlement from the time he became of age, provided there was then no adverse claimant to the land.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 454.

An error in a Declaratory Statement may be corrected before the inception of an adverse claim.

DEPARTMENT OF THE INTERIOR,
March 11, 1858.

In the case involving the conflicting pre-emption claims of Charles Kellerman and Joseph Lautzen, to the southwest quarter of southeast quarter, section 13, township 118, range 23, west, which was submitted by your letter of the 17th of December last, the following facts are shown by the papers. The said Joseph Lautzen filed his declaratory statement on the 21st of April, 1856, for the north half northeast quarter, section 24, and west half southeast quarter, section 13, township 118, range 23, west; and afterwards, to wit, on the 13th of September, 1856, he filed declaratory statement No. 3835, for the east half northeast quarter, and northwest quarter northeast quarter, section 24, and southwest quarter southeast quarter, section 13, thus diminishing his former claim, by one forty-acre subdivision in section 13, and embracing in lieu thereof, an additional forty-acre tract in section 24, upon which his dwelling-house was situated. Lautzen appears to have continued in uninterrupted possession of his claim from the commencement thereof, until the 11th of December, 1856, when Kellerman commenced a settlement on the southwest quarter southeast quarter of section 13—the tract in dispute—and filed his declaratory statement on the 16th of the same month. The object of Lautzen in filing his second application, seems to have been to embrace within his claim the tract upon which his house was situated. His second declaratory statement was filed nearly three months prior to the settlement and filing of Kellerman, who thus had full notice of the claim of Lautzen. The evidence shows that Lautzen made improvements on the land in dispute, both prior and subsequent to his second filing. It does not appear that he ever relinquished his claim to the land in controversy. From these facts, I am of the opinion, that said tract of land being subject to the claim of Lautzen, said Kellerman has acquired no rights thereto. The decision of the Register and Receiver, adverse to Lautzen, is therefore reversed, and he will be permitted to enter the land he claims under his second declaratory statement, upon complying with the further provision of the law.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 455.

A claimant, who filed his Declaratory Statement in time, will not be confined to a regular quarter-section, to avoid confliction.

DEPARTMENT OF THE INTERIOR,
August 31, 1858.

In the case submitted with your report of the 13th ultimo, wherein F. P. Stubbs, claiming under a Louisiana internal improvement warrant, has appealed from your decision in favor of the right of the heirs of Madison Saunders to enter by pre-emption, the southeast quarter of the southeast quarter of section 10, and lot 17 of section 11—De Bastrop grant,—I see no sufficient cause for overruling your decision. There is no controversy, as to the right of the heirs to a pre-emption, but as the warrant was presented August 7, 1855, and the declaratory statement not filed till the 31st, it is claimed that the heirs of Saunders, whose father had a dwelling and improvements on the other subdivision named in their declaratory statement, ought to be compelled to take their one hundred and sixty acres in such shape as will not interfere with the warrant location. As the declaratory statement was filed in time, it is as good as though it had been filed a month sooner, and I know of no authority to refuse to the settler the right to select adjoining tracts of vacant public land, to make up his quantity. It is in evidence, that one Aaron Livingston, some years since, cleared and cultivated the land in controversy, but he does not appear as a contestant; and, as against him, the land is as much subject to the pre-emption claim as to the location of the warrant. The papers which accompanied your report, are herewith returned.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 456.

A Pre-emption Claimant having filed for, and sold another tract, is disqualified.

DEPARTMENT OF THE INTERIOR,
September 8, 1858.

With respect to the pre-emption entry of Simpson Hargus, in the Nebraska City, N. T., District, the state of facts presented in your letter of August 4, 1854, and by the papers on file, satisfy my mind that the same was erroneously allowed, and should be cancelled. Hargus does not appear to have been a settler in good faith on the land, or to have been an actual inhabitant thereof, in the sense contemplated by law. In addition, his having filed declaratory statements for other tracts, one of which, it appears, was sold by him for a considerable sum, and thus derived the benefit of a right of pre-emption, renders his filing upon the land now claimed by him, illegal, particularly since his last filing bears date subsequent to the Circular of December 3, 1856. Heth, the adverse claimant, has established no right whatever to the land in dispute.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 457.

A party fixing his settlement in his Declaratory Statement, will not be permitted to claim the benefit of work done at an earlier date.

DEPARTMENT OF THE INTERIOR,
November 6, 1858.

The material facts in the contested pre-emption case between A. R. Tribble and John D. Lawhorn, from the Land Office at Kickapoo, Kansas Territory, are as follows :—

On the 7th of January, 1856, said Lawhorn filed his declaratory statement, fixing his settlement on the tract in controversy, on the 1st August, 1854. His witnesses testify, however, that he commenced work on the land on the 18th July, 1854; and although he had declared that the 1st August was the date on which he settled upon the land, with the intention of availing himself of the provision of the pre-emption law, he now seeks to obtain the benefit of work done upon the land prior thereto. He does not appear to have become an actual *bona fide* settler and resident upon the land until the spring of 1855; although one witness testifies that the claimant had done some work thereon during the preceding winter. Said Tribble filed his declaratory statement on the 12th of January, 1856, alleging settlement on the 20th of July, 1854, which the proof sustains. He moved upon the land in September, 1854, and has continued to reside thereon. In view of these facts, I am of the opinion, that said Tribble has established the superior claim to the tract in dispute.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 458.

Where a dwelling-house had been previously built, it is not necessary to erect another house, to entitle a claimant to pre-emption.

The act extending the Pre-emption laws to Kansas, which requires a settler to file within three months from the survey in the field, does not create a forfeiture, where the claimant actually files notice prior to the inception of an adverse claim.

DEPARTMENT OF THE INTERIOR,
November 6, 1858.

You will find enclosed herewith the papers received with your letter of the 6th ultimo, in the case of *Joseph Sapp v. John W. Friley*, from the Land Office at Kickapoo, Kansas Territory, in which is involved the claims of pre-emption right of said parties to the southeast quarter, section 9, township 7, range 21. Said Sapp alleges settlement upon the land on the 10th September, 1855. He filed his declaratory statement in the office of the Surveyor-General, on the 4th March, 1856. The survey was completed on the 1st December, 1855, and more than three months had consequently elapsed before the date of his filing. Said Friley settled upon the land by moving into an unoccupied tenement thereon, on the 1st August, 1857. A claimant who moves into a house previously erected, making it his home and clearly manifesting his intention of acquiring a right of pre-emption to the tract on which it is situated, has made a legal settlement on the land, and on producing proof of continuous inhabitaney and improvement, would be entitled to the right of entry, if no prior and superior claim existed thereto. But the first filing of Sapp by which he gave notice of his claim to the land in controversy was valid, and if he shall show to

the satisfaction of the Register and Receiver, that he has complied with the other provisions of the law, with regard to inhabitaney and improvement, and shall hereafter fulfil its farther requirements, he should be permitted to enter the land he claims. The forfeiture created by the 12th section of the Act approved July 22, 1854, for failure to file notice of the specific tract claimed, within three months after the survey has been made in the field, was not intended to apply to, or to be enforced in other cases than those in which the land is claimed adversely, before the first settler actually files a notice of his intention to pre-empt the land upon which he has settled. The declaratory statement is intended simply as notice that the tract specified is claimed, and if at the date when it is filed there is no other settler upon the land claiming the right of pre-emption, the party filing will be entitled to all the benefit of such notice from the date thereof. The Government will not defeat the claim of a *bona fide* settler, on account of the non-compliance on his part, with a mere technicality which was intended to protect the rights of adverse claimants. In the case under consideration, if the contestant Friley, had settled upon the land before the filing of notice by Sapp, the latter would have forfeited all right thereto, provided the former should conform to the requirements of the law. But the fact is that said Friley did not settle upon the land until after the lapse of more than a year from the date of filing by Sapp, whose right had attached to the land from said date. For the foregoing reasons the claim of said Sapp to the land in dispute is considered valid, and his right of pre-emption thereto will be recognized and admitted, upon his complying with all the provisions of the law.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 459.

The fact that a tract of Land had been previously entered by another, and the entry cancelled, would not prevent the acquisition thereof by pre-emption.

DEPARTMENT OF THE INTERIOR,
December 15, 1858.

Sir:—The papers received with your letter of the 27th October last, in the pre-emption case of *Thomas A. Taylor v. George W. Bell*, from the Land Office at Superior, Wisconsin, are herewith returned.

The entry of said Bell having been cancelled, for the reasons stated in your letter, the controversy between the claimants is thereby ended, and it only remains to determine whether the said Taylor has established a valid right of pre-emption to the land claimed by him.

I am of the opinion that the facts that said land had been previously entered by another, and the entry thereof has been, or shall be cancelled for sufficient cause, would constitute no bar or obstacle to an acquisition thereof by pre-emption, upon satisfactory proof being produced by a claimant, that he has fulfilled the requirements of the law.

For my views, more fully stated, you are referred to my letter of the 13th instant,* in the case of *Dewey v. Allen*, from the Land Office at Plattsburg, Missouri. The law of 1841 requires, *inter alia*, that the claimant shall inhabit and improve "the land upon which he has settled, with a view of acquiring a pre-emption right thereto."

The evidence adduced in this case shows conclusively that the said

* No. 460. See also No. 461.

Taylor has not inhabited the land as contemplated and required by the law. I therefore concur in opinion with you that "his subsequent acts are not of a character to entitle him to the privilege of entering it under the Act of 1841," and his claim is accordingly rejected.*

Very respectfully,

Your obedient servant,

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 460.

The pendency of an illegal entry, which was cancelled before the Pre-emption Claimant appeared to make proof, &c., would not make void settlements effected before the cancellation.

DEPARTMENT OF THE INTERIOR,
Washington, December 13, 1858.

Sir:—After mature consideration of your report of the 3d March last, in the case of Samuel J. Dewey and George P. Allen, contesting the right to enter by pre-emption the east half of the northeast quarter of section 6, township 59, range 26, in the Plattsburg District, Missouri, I am of the opinion that the pendency of an illegal entry of the tract, which was cancelled before the contestants appeared at the local office to make proof and entry, was not an obstacle, which made void their settlements effected before the cancellation of said illegal entry.

The title to the land remained in the United States. The land was public land, although withheld for a time from sale, at ordinary private entry, and liable to be restored to market by a public notice, should you think that course proper. The ninth clause of the regulations of January 9, 1836, I regard as based on the general obligation of the executive, to see that the laws respecting the sale of the public lands are faithfully executed. Where particular tracts have, for some time, remained out of market, from oversight, neglect, or improper action on the part of subordinate officers, or from accident, or mistake, it is proper and legal to instruct local officers to cause notice of the time and place of restoring them to sale, to be published, and to direct them to conform their action to the terms of such notice.

The acts of Congress, by which the ordinary public and private sales of governmental lands are, in the most material respects, regulated, were passed in 1810 and 1820. The laws now in force, conferring pre-emption rights, are of comparatively recent date, and have introduced a new and distinct manner of sale, not very readily harmonized with the methods and form of other authorized disposals of public lands. But to all these laws, full force and effect must be given, if possible. The pre-emption laws confer upon those who establish a compliance with them, a preference right to purchase a limited quantity of public land, and so far, that right is in derogation of the more general right of the public to purchase at public and private sale, under the old laws.

If the preference right of the pre-emptor is ever to be recognized in lands which have once been illegally sold, it should be available to him, as soon as all legal impediments to its consummation are removed; and that it may so be available, we are compelled to recognize his settlement, though

* See No. 486.

commenced before the cancellation of a previous void entry of the tract claimed.*

The Act of Congress of August 3, 1846, and acts supplementary thereto, do not inhibit pre-emption settlements on tracts that have been withheld from entry, or covered by suspended entries that shall be rejected by the Board; though it is provided in the fifth section of said act, that the Commissioner of the Land Office shall order such lands "into market," after the publication of notice for thirty days, in like manner as though they had been brought to sale under the formality of a proclamation of the President. It would therefore seem to do no more violence to the Act of 1846, to recognize pre-emption settlements, and admit pre-emption entries before the expiration of the Commissioner's public notice, than is done to the Acts of 1810 and 1820, regulating sales, by the allowance of pre-emption entries in the body of unoffered lands, before the day fixed by the proclamation of the President, for offering them at public sale.

These remarks will not be understood as relating to tracts or bodies of land that have been specially reserved from settlement or sale, by order of the President, or other due authority; in respect to which, of course, the special laws or orders made in each case will be respectively observed and carried out.

In the case of Dewey and Allen, now before me, on the appeal of the latter from the decision of the Register and Receiver at Plattsburg, in favor of the claim of Dewey, it is sufficient to say, that Allen does not show that he was the first settler; and the decision of the local officers against him, and in favor of the claim of Dewey, is therefore affirmed.

The papers in the case are now returned to your office.

Very respectfully,

Your obedient servant,

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 461.

Where land has been once entered, no Pre-emption right will attach to the same, until after the entry is set aside. A settlement made during the pendency of a prior entry by an adverse claimant, will confer no right. Decision of 13th December, 1858, in the case of Dewey v. Allen, (No. 460,) explained.

DEPARTMENT OF THE INTERIOR,
September 30, 1859.

Sir:—Your report, together with the accompanying papers relative to a claim asserted by John R. Gilman to a tract of land in Nebraska Territory, which had been entered by one Henderson Grey, about two years previous to the inception of the pretended right of said Gilman, has been considered.

Gilman cannot be regarded as a party to a contest in regard to the land in question. His settlement was made during the pendency of Grey's entry, which had been allowed by the Register and Receiver upon proof satisfactory to them. No one appeared at that time to dispute the right of said Grey, and no one, whose settlement did not commence prior to the date of the entry of said Grey, can now be permitted to appear as an ad-

* See letter of the Secretary, in the case of J. R. Gilman, (No. 461,) explanatory of part of the foregoing decision.

verse claimant. It is only in cases where entries have been annulled, that subsequent pre-emption rights can accrue.

In this case, the entry has not been cancelled by you for fraud, nor rejected by the board of suspended entries, and you do not propose to disturb it. Whenever facts shall be brought to your notice, which are sufficient to justify the opinion that fraud has been committed in any case, it will be proper to order an investigation thereof. In the present case, however, you have decided that the statements contained in the affidavits filed do not satisfy you that a reopening of the pre-emption claim of said Grey should be ordered, and there is no adverse legal claimant qualified to appeal from your action, this Department will not revise the same. In the case of *Dewey v. Allen*, decided by me on the 13th of December last, the language employed might be considered to extend to the recognition of settlements made after the original entries, and before the cancellation thereof. Such is not the view that I entertain of the law. On the contrary, the entry of a tract of land withdraws the same from market or pre-emption claim, and no right to the same arising subsequently to entry, and before cancellation, can be recognized. An intervening settlement would confer no right. The appeal of said Gilman is hereby dismissed, and the papers submitted to this Department on the 21st instant, are now returned.

Very respectfully,

J. THOMPSON, Secretary.

Jos. S. Wilson, Esq.,

Acting Commissioner of the General Land Office.

No. 462.

Where land has been once entered and the entry cancelled, the same is not subject to "private entry" until public notice is given.

DEPARTMENT OF THE INTERIOR,
December 18, 1858.

Sir:—From your report of 23d September last, submitting the case involving the claims of Thomas Humphrey and James M. Stowe to a certain tract of land in the Palmyra, Missouri, District, it appears that said Humphrey had been permitted to enter the land referred to, by pre-emption, at the graduated price: that subsequently his entry was cancelled, for the reason that said claimant had never permanently resided upon the land entered. It also appears, by your letter to the Register and Receiver of 23d April, 1857, that those officers were instructed to permit James M. Stowe to enter the land under the former rule of your office, allowing the successful contestant, in such cases, a preference right to the land in dispute, &c.

It is not perceived that any valid reason exists for applying a rule of this kind to lands within a particular district, which is at variance with the established practice with regard to all other public lands.

The cancellation of the entry of said Humphrey is approved.

Said Stowe applied to enter the land in question by *private entry*, the same having been previously sold, and this would, therefore, seem to be such a case as was contemplated by the fifth section of the Act of August 3, 1846.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 463.

A Pre-emption Claimant who fails to settle and improve the land claimed within a reasonable time, forfeits all right thereto. There being no adverse right, however, and it being shown that he was actually residing in good faith thereon, he may be permitted to file a new Declaratory Statement therefor.

DEPARTMENT OF THE INTERIOR,
February 3, 1859.

I have examined and considered the facts in the pre-emption case between William Noel and Mary E. Pepper, (now Hays,) and herewith return the papers which accompanied your letter of the 17th November last.

Your decision, adverse to the claim of Mrs. Hays, is approved. A claimant who fails to settle and improve the land embraced in his declaratory statement within a reasonable time, forfeits all right of pre-emption thereto, unless said failure is satisfactorily explained. It would be difficult to conceive a state of facts which would justify or excuse so long an absence and non-residence, as is shown in this case by Noel. I am of the opinion, as he did not follow his declaratory statement by actual settlement and inhabitancy, that he has forfeited the inceptive right which he had acquired. As, however, the adverse claimant has shown no right of pre-emption to the land, and as said Noel has now moved upon the same, and appears to be an actual settler thereon, he may be permitted to file a new declaratory statement, fixing settlement at any time within three months from such filing, and thereupon, on making proof of settlement and improvement to the satisfaction of the Register and Receiver, and upon complying with all the requirements of the law, his entry of the land claimed by him may be consummated.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 464.

*Where a Pre-emption Claimant's first acts were sufficiently connected with his subsequent settlement and improvement, the same would carry the date of his right beyond that of an adverse private entry.**

DEPARTMENT OF THE INTERIOR,
February 7, 1859.

Sir:—I have the honor to acknowledge the receipt of your letter of the 26th ult., in relation to Joseph Polley's claim of pre-emption to the northwest quarter of the southwest quarter of section 5, township 21, range 10, in the Steven's Point land district, the same land having been claimed by Mr. Bouck, as administrator of Smalley.

To the allegation of Mr. Bouck, that Polley's claim was "bogus," and the allowance thereof an "outrage," it might be sufficient to say that the claim was allowed by the local officers, and their action was affirmed here on appeal. Though it is unusual to furnish any explanations of the decisions that are made in this Department in the proper and necessary course of the business entrusted to it by law, at your solicitation, I consent to do so in the present case. It appeared in the testimony that Polley, sometime in the summer of 1855, had gone upon the land and made a commencement of improvements. He also filed his declaratory statement, and returned to the East for his family. He, however, found his family sick; so

* See No. 468.

much so as to forbid their removal that fall. In the following spring, Polley returned to Wisconsin with his family, and settled upon the land. He made such improvements as his limited means would admit, and had continued to reside on the land thereafter; one or more members of his family had died and were interred there. Under such circumstances there could be no doubt of the *bona fides* of Polley in the matter, from beginning to end. The only question seemed to be whether his first acts were sufficiently connected with his subsequent settlement and improvements, so as to carry the date of his right to the land, behind the adverse entry of Smalley, who had, in Polley's absence, entered a part of the land embraced by the declaratory statement of the latter. The decision of the local officers, sustained by this Department, was in the affirmative. The case, as regarded here, was simply one between the pre-emptor and the United States, as the entry by Smalley was made while the files of the land office showed that Polley was a claimant for the same land, by pre-emption, and upon complying with the pre-emption laws, would have a superior right.

J. THOMPSON, Secretary.

Hon. C. Billingham, House of Representatives.

No. 465.

A mistake of description in a Declaratory Statement, if ignorantly made, and there is no evidence of bad faith, may be corrected at any time.

Such statement, when the land was actually occupied, would be sufficient notice to others.

If while a Claimant owned three hundred and twenty acres of land, another had settled, the latter would have the preference right; or if it should appear that the former merely temporarily divested himself of the excess, intending to resume the same, his claim should be rejected.

DEPARTMENT OF THE INTERIOR,
April 14, 1859.

The pre-emption case from Lecompton, Kansas Territory, wherein Isaac Shirley and Elisha Deiffendorf are parties contestant, has been examined and considered, and the papers submitted by your letter of the 23d February last, are herewith returned.

The first question presented by this case is, whether the error in the declaratory statement of said Shirley, by which the land upon which he had actually settled was not described, but, in its stead, two eighty-acre tracts, one lying on the east, the other on the west thereof, was fatal to the pre-emption right of said claimant. There being no evidence of bad faith or unfairness on his part in relation to such error, and the same appearing to have been ignorantly and unintentionally committed, I am clearly of the opinion that it might be corrected at any time, and that such filing, though erroneous, when considered in connection with the improvements of said Shirley on the tracts which separated the two specified in his declaratory statement, was sufficient notice to all others of the fact that he really intended to claim the land upon which he resided and which he cultivated. This objection to the right of Shirley cannot, then, be sustained.

Another point, urged in opposition to the claim of Shirley, who appears to be a *bona fide* settler, is, that at the time his settlement commenced, he was the owner of three hundred and twenty acres of land, and more. The intention of the pre-emption law was, manifestly, to restrict the benefits conferred by it to those who owned less than that quantity of land; and

no right of pre-emption could be acquired by one who was the proprietor of a greater quantity than that specified. No right of pre-emption, therefore, accrued to said Shirley, by virtue of his first settlement on the land in controversy; and if, while he was thus disqualified, another had settled on the land, in good faith, who was competent to take land under the law, the latter settler would have had the preference right. Or, if it should appear that the former had merely temporarily divested himself of the title to the excess, for the purpose of evasion, and to relieve himself of his disability of pre-emption, intending to resume the proprietorship thereof, after being allowed to pre-empt government land, such a transaction would be regarded as fraudulent, and his claim should be rejected. But the facts developed in this case do not indicate that the transfer by Shirley, was other than a real conveyance, and an actual sale. Otherwise, it would be proper to disallow his claim of right to pre-empt the land. Upon the other point, it is fully shown that Shirley, long previous to the inception of Deiffendorf's claim, had become a qualified pre-emptor, by having reduced the quantity of land owned by him, below that limited in the restrictive clause of the law.

Said Shirley appears to have become a qualified pre-emptioner in March, 1856; in June following, he filed his declaratory statement; and having complied with all the legal requirements, since the date of the removal of the disability referred to, his right to pre-emption has attached to the lands.

Your decision, sustaining the action of the local officers, in favor of said Shirley, is accordingly hereby affirmed.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 466.

The purchase of the claim of a prior settler, in connection with other facts showing good faith, is sufficient to constitute a Pre-emption settlement.

DEPARTMENT OF THE INTERIOR,
May 20, 1859.

Sir:—The papers received with your letter of 31st December last, in the case involving the conflicting pre-emption claims of George W. Keller, Joseph Worley, and Calvin R. Martin, to a certain tract of land lying in the Lecompton District, Kansas Territory, you will find herewith enclosed. I concur in the conclusion reached by the Register and Receiver, and by yourself, that said Keller is entitled to enter the land he claims. It seems that he went, in company with a witness, to the house occupied by Coffee, on this land, on the 5th of March, 1857. That he then and there agreed to purchase all the interest which said Coffee had to the land, and that he did actually purchase, and entered into the possession of the same. That he employed said Coffee to occupy the place for him until his return with his family. The purchase, execution of a deed, and payment of part of the purchase-money, to the original settler, in the presence of a witness, and the employment of an individual to occupy the land for him, were sufficient to constitute an inceptive settlement, particularly as the whole proceedings indicate fairness and good faith.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 467.

Under given circumstances, the variance of a few days between the date of settlement, as alleged in the Declaratory Statement, and as proven, is immaterial. Dating the filing before settlement proven, will not necessarily vitiate the claim.

DEPARTMENT OF THE INTERIOR,
Washington, June 15, 1859.

Sir:—The question submitted with your report of the 11th instant, in the case of Benjamin Phen's pre-emption entry at the Stevens Point Land Office, Wisconsin, which is contested by J. C. Barton, who entered the land after Phen had filed his declaratory statement, and before the time had expired for him to make his proof and payment, under the pre-emption law, has been considered, and your decision, sustaining the action of the local officers, is hereby affirmed.

On the hearing, Phen was unable to prove that his settlement commenced as early as was alleged in his declaratory statement; but he did show settlement and improvement before any adverse claim intervened; and the variance of a few days between the date of settlement, as alleged in the declaratory statement, and as proved on the hearing, is immaterial, under such circumstances. Nor will the fact, that settlement is not proven to have preceded the filing, vitiate the claim, so long as the allegation of the claimant is uncontradicted, and may be received as true, though not susceptible either of proof or contradiction, successfully.

The papers in the case are now returned.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 468.

*Where a Pre-emptor fails to show a sufficient connection between his settlement and the commencement of inhabitancy, the intervening entry of a private purchaser will not be disturbed.**

DEPARTMENT OF THE INTERIOR,
Washington, June 16, 1859.

Sir:—It is pretty clearly shown by the evidence, that Bamber, who was a single man, early in June, 1855, commenced a shanty on the premises, and filed his declaratory statement June 8, 1855. This shanty was never habitable, and was never occupied. No further improvements were made by him until March, 1856, although he appears to have resided in the neighborhood. In March, 1856, he built another house, plowed several acres of the land, went to live on the land, and thereafter made it his home.

This tract of land was in market in November, 1855, when Davis made his entry, unless it had been settled upon by Bamber. The latter does not show that he had resided on the land at any time before March, 1856, nor had he made substantial improvements. He has brought forward no facts or circumstances tending to excuse his *laches*. What he did in June, 1855, did not amount to a settlement, nor are his acts then performed, sufficiently connected with his building and residence in March, 1856, to warrant me in regarding them as carrying the date of settlement so far back. Although his entry, based on the settlement in 1856, in the absence of any conflict

* See No. 464.

with a prior entry, might be entitled to confirmation, it cannot prevail over the claim of Davis, who, in my opinion, has the better right to a patent, if no further objection to its issuance is known to your office.

Such being my opinion, your decision, in support of the action of the local officers, must be overruled, and the pre-emption entry of Bamber cancelled.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 469.

Pre-emption entries, prematurely made, are always suspicious. Pre-emption entries of tracts that have never been actually settled and improved, are in derogation of the privilege intended to be conferred on bona fide settlers.

DEPARTMENT OF THE INTERIOR,
Washington, June 16, 1859.

Sir:—After an examination of the case of contest between A. H. Scott and W. C. Luther, for the southwest quarter of section 31, township 10, range 14, east, Nebraska City District, I am unable to concur in the conclusions reached by the local officers in favor of the right of W. C. Luther. It is true, that Scott has not established any claim to the land which Luther entered by pre-emption on the 30th March, 1857. On allegations of fraud, the claim of Luther was re-investigated in June, 1858, and the local officers report that, in their opinion, the evidence adduced was not sufficient to warrant the cancellation of his entry.

The facts, as developed by the testimony, appear to have been as follows : In 1856, one Edward W. Neligh claimed this quarter-section, under a territorial law authorizing the possession of three hundred and twenty acres of government land by squatters; but he made no claim to it under any law of the United States. In January, 1857, Luther, who was living with and working for Neligh, went upon the land and commenced removing an old cabin, and building another on a foundation within a few feet of the first. On the 12th March, Scott went upon the land, and whilst there at work building another shanty, Luther came and ordered him away. About the 20th, Luther returned to the land, and with assistance from Edward Neligh, completed his cabin, and moved in a few days after. Being a single man, he stayed there a few days, and then went to the land office and entered the tract with a warrant. From the land office he returned to live with Neligh and work there, and so continued till some time in April, when he went to Iowa. He has never been upon the land since. About the time Luther completed the cabin, he had been heard to say that he had no pre-emption claim, and did not intend to make any.

The evidence is conclusive, that Edward Neligh assisted with his labor, and accompanied Luther when making improvements; that he owned part of the furniture which was put in the house: that he furnished the logs and lumber to build the cabin, and the warrant to enter the land: that he was known as landlord, in renting the premises, as early as the 1st May, 1857. On the 9th May he obtained a deed of the land from Luther; and it was at his expense that further improvements were made under an agreement entered into with him on the 5th May.

When Luther's entry was admitted, he had made no improvement except

his cabin. He had filed no declaratory statement, but came forward and entered his claim within a few days after he had settled. As soon as he had effected an entry, he voluntarily abandoned the land. Pre-emption entries, thus prematurely made, are always suspicious. A party who is a *bona fide* settler, and designs to comply with the law in good faith, generally finds it for his interest to file his declaration, and avail himself of the time which the law allows him within which to tender his proof and payment.

The circumstances of this case, as developed in the testimony, requires the cancellation of Luther's entry. He never complied with the law in good faith.

The pre-emption laws are designed for the benefit of *bona fide* settlers on the public lands, who go there to establish themselves in a home of their own. Incidentally, when honestly administered, they promote the development of the agricultural resources of the wilderness, and enhance the value of tracts of public land lying in the vicinity of those occupied by settlers. Pre-emption entries of tracts that have never been settled and improved in good faith, are in derogation of the pre-emption privilege conferred on men who may wish to settle and honestly comply with the law, inasmuch as the tracts are thus withdrawn from market, and from the range of choice open to emigrants. Such entries are likewise hostile to the general provisions of our land laws, and injurious to the interest of Government in the public lands as a source of revenue.

Whenever, therefore, private entries of unoffered public lands are effected by formal proceedings under the pre-emption laws, but without a compliance with the spirit and general requirements of those laws, and such cases come before me, I feel in duty bound to refuse to recognize the claims of parties.

The papers in this case are now returned to your office.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 470.

Failure to prosecute such improvements as are requisite to denote actual settlement, within a reasonable time, will create a forfeiture. The land, though previously entered, will be subject to Pre-emption by a bona fide settler.

DEPARTMENT OF THE INTERIOR,
June 17, 1859.

Sir:—The papers in the contested pre-emption case between Bluford A. Johnson and Daniel Doyle, from the Lecompton, Kansas Territory, Land Office, which were received with your letter of the 19th of March last, are now returned.

I concur with the views of the Register and Receiver, so far as they decide against the claim of Johnson, and also with your decision adverse to the right of Doyle. Johnson forfeited any claim he might otherwise have established by his failure to inhabit and prosecute such improvements as are requisite to denote actual settlement within a reasonable time. Doyle does not appear to be an actual settler, or a *bona fide* pre-emptor in any sense of the word. The fact that he entered the land so soon after his settlement, creates a doubt of his honest intent to comply with the law, which he has utterly failed to do.

I decide, therefore, that the claim of said Johnson be rejected, and the location of said Doyle be set aside and annulled. The land in controversy will not be withdrawn from pre-emption, but the same will be subject to the claim of a *bona fide* settler, (should application be made by such an one,) upon satisfactory proof being produced by him of a compliance with the law.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 471.

Where the Register wrongfully refused to permit a Pre-emption Claimant to file notice, he may be permitted to file as of the date he applied to do so.

DEPARTMENT OF THE INTERIOR,
June 28, 1859.

Sir:—I have examined the question presented by the appeal of Daniel Morgan, from your decision, adverse to his pre-emption right to the north-west quarter of section 22, township 2 north, range 2, east, in the Mineral Point, Wisconsin, Land District, and herewith return the papers.

There is no evidence, that at the time of the application of said Morgan to file his declaratory statement for the land, the same was actually selected for university purposes. The Register and Receiver report, that for some time previous to his said application, this tract had been “erroneously withheld from private entry, the same having been marked upon the plats and records of the local land office as ‘university land.’”

It was not therefore subject to private sale, until it should be restored to market, by public notice. It was, however, subject to pre-emption, and the Register erred in refusing to permit said Morgan to file his declaratory statement in 1855. But this wrong act of the Register will not defeat his right. His claim attached to the land from the date of his application to file, and he may now be permitted to comply with the requirements of the law, by filing his declaratory statement as of that date; and upon satisfactory proof of continued inhabitancy and improvement, he should be allowed to enter the same, any former sale thereof being first annulled.

J. THOMPSON, Secretary.

Hon. J. S. Wilson,

Acting Commissioner of General Land Office.

No. 472.

Where two Claimants settled before the survey, and about the same time, and afterwards, were found to be on the same quarter-section, and where the land had not been surveyed at the date of the law authorizing settlement, held that a division of the land should be made.

DEPARTMENT OF THE INTERIOR,
Washington, July 6, 1859.

Sir:—I have carefully reviewed the case of contest between James Brooks and Douglas Hamilton, submitted on appeal, with your report of the 20th May last; and also Hamilton’s application for a rehearing. As

I view the case, a rehearing of the matter will not be necessary, except so far as the local officers may desire to be more fully informed of the exact location of the dwellings and improvements of the contestants.

Your decision of the 4th February last, was in favor of Brooks, for the entire quarter-section in controversy, on the ground that he was the first settler. Brooks began work on the 8th, and Hamilton on the 10th June, 1854. Their respective settlements were afterwards consummated in good faith; and having been designed primarily, to attach to separate tracts of land, were not in competition until after the public surveys were made, which brought the houses of both parties upon the same quarter-section, though on opposite sides of a small stream, and, as stated, from a quarter to half a mile apart.

The Act of Congress, approved July 22, 1854, made the land subject to the provisions of the pre-emption law of 1841, and recognized claims by pre-emption to lands unsurveyed. As the tract in controversy had not been surveyed before the 22d of July, 1854, and no legal authority for settling thereon existed before the enactment of that date; and as that law found both claimants settlers in good faith, which settlements were consummated fully and amicably, before the survey in 1855, I am of the opinion, that the effect of the Act of July 22, 1854, is to confirm both settlements. But both parties cannot have the same one hundred and sixty acres, and yet both appear to be entitled to a right of pre-emption in the land settled upon by each, especially as the dwellings appear to be some distance apart. I conclude that the rights of both are equal, and that it is the duty of the local officers to award one-half the quarter-section to each, by legal subdivisions, so that the entry of each claimant will include his own dwelling and improvements.

Should either party decline to enter, after reasonable notice, or abandon his privilege, the entry of the entire quarter-section by the other party, will be proper.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 473.

The Pre-emption law gives a Claimant no right, by reason of a settlement on one tract, to enter another, such as he may choose.

DEPARTMENT OF THE INTERIOR,
July 23, 1859.

Sir:—In the case of contest between Robert Becker and William H. Schoonover, submitted with your report of the 27th April last, appealed by the former from your decision against him, and in favor of the right of Schoonover, to enter the northeast quarter of section 3, township 24 north, range 28, west, in the St. Cloud Land District, Minnesota, I concur in the decision of your office, and now return the papers.

* * * * *

Becker settled before the survey, and his claim lines, made before survey, had extended over more than half the quarter in contest, and he had a few furrows ploughed; but when the survey was made, his house was not found on this quarter-section of land, but in another township. Schoonover settled on this quarter-section, after survey in the field, and the evidence shows he continued his residence on the land up to the time of the

contest, and had made some slight improvements, besides his house. After Schoonover's settlement, Becker erected a shanty near the centre of this quarter, but I think the weight of the testimony is, that he never actually lived in it, but continued his residence in the other house. When the parties came to file declaratory statements, both filed on this tract; and it appears to be pretty clear, that they filed with a knowledge of all the facts. Becker made no mistake in filing. If he had claimed the land on which he had settled and built his house, by subdivisions, so as to include part of the land now in contest, it is evident that he might have successfully maintained a claim in opposition to Schoonover, for some of this land.

But the Act of August 4, 1854, was evidently designed to protect the improvements of parties who settle before survey, and to confer a preference right to enter the land on which the improvements have been made, and it requires the party claiming this right to file a declaratory statement, designating the tract on which he had settled, and the date of settlement, within three months after the survey is returned, otherwise, his claim to be forfeited, and the tract to be awarded to the next settler, in order of time.

In this case, Becker did not file for land on which he had settled, and the law gives him no right by reason of a settlement on one tract to enter another, such as he may choose. His three months have gone by, and he has not claimed, as the law authorized. In the meantime, Schoonover becomes a settler on the quarter after survey, and claims the whole. We cannot deny his entry, because Becker once had a claim to part, which he could have perfected under the law, but in respect to which he permitted his opportunities to pass without availing, in time, of the benefits he otherwise might have secured.

J. THOMPSON, Secretary.

To the Commissioner of the General Land Office.

No. 474.

A rehearing in a given case refused, but the lands being subject to pre-emption, any resident thereon, who may show a compliance with the law, may establish a right of Pre-emption thereto.

DEPARTMENT OF THE INTERIOR,
August 11, 1859.

Sir:—The papers which have been filed in support of the application of James D. Minchell and David Beebe, for a rehearing of the contested pre-emption case, which was decided by me on the 13th April last, adversely to all the claimants of the tract in controversy, which is situated in the Nebraska City District, are herewith forwarded to your Bureau.

My decision above referred to, was a rejection of all claims then presented, for the reason that the claimants had not brought themselves within the requirements of the law. A reinvestigation and reinstatement of those cases, cannot be allowed. The land in question is however still subject to pre-emption, and if any one who has settled upon it, or shall settle upon it, will now comply with all the requirements of the law, a pre-emption right may be established thereto. Before any steps are taken by the local officers upon any particular claim, fair notice should be given to all who occupy the land, by personal residence thereon, of this decision, so that all parties may have an equal opportunity of establishing their rights. Of course any

settler who has disqualified himself by a former filing or otherwise, for acquiring a right of pre-emption, unless within the exceptions specified in the instructions and regulations in force, in relation thereto, would be excluded from the right of entry. This point must be inquired into by the local officers, and a report as to the qualifications of the respective claimants will be required, as the papers indicate a previous entry, by one of them, on another tract.

J. THOMPSON, Secretary.

Acting Commissioner of the General Land Office.

No. 475.

A Pre-emptor may date his Pre-emption settlement, at any time within three months from the date of filing notice.

DEPARTMENT OF THE INTERIOR,
August 11, 1859.

Sir:—In the case involving the pre-emption claims of Ernest Kasten and Henry Benz, from the Kickapoo, Kansas Territory, Land Office, the facts are, that neither party filed notice within the required time, and that accordingly all right of either, under his original settlement, was lost. Both parties continued to occupy and inhabit the land. Kasten filed his first notice on the 30th May, 1857, and Benz filed on the 20th October, 1857. Had Kasten, instead of fixing the date of his settlement as a pre-emptor, in 1855, fixed upon any time within three months from the date of his declaratory statement, as he might have done, his right as the first settler, who had observed the law, would have been unquestionable. As he was living upon the land, no specific act was necessary to constitute a new settlement, as a pre-emption claimant. *Had the contestant* given notice of his intention to claim the right of pre-emption to the land before Kasten filed, the former, although the later occupant, would have been entitled. But Kasten's right may be regarded as commencing from the date of his first filing, which may be treated as the date of his pre-emption settlement. This will obviate the necessity of observing the useless formality of returning the case to the local office, to afford him the opportunity of amending his declaratory statement. In this, and in any other view of the case which I am able to take, Kasten has the *superior claim* to the land.

J. THOMPSON, Secretary.

Acting Commissioner of the General Land Office.

No. 476.

The law allows 'a Pre-emption Claimant a certain time within which to file, and no entry thereof, before he offers to file, if within the legal time, will debar him of his right. A person using or renting out public land, a trespasser, &c.

DEPARTMENT OF THE INTERIOR,
August 27, 1859.

Sir:—The facts in the case of *James H. Daniels v. Thomas Diggs*, each claiming the right of pre-emption to a certain tract of land in the Boonville, Missouri, Land District, appear to be as follows:—

Said Daniels commenced his settlement on the 29th day of June, 1858,

and finished a dwelling house on the 2d July. He then left in order to bring his family to the place. He returned on the 6th July and found his house torn down and some of the logs burned. On the 8th of July he finished another house, in which he left his family while he went to the land office to file his notice. On account of the sickness of his child, it is alleged that he took his family to the place from which he moved, said to be the house of a relation. He was not permitted to enter for the reason, assigned by the local officers, that the land had been entered by another. The law allows a claimant thirty days from the date of his settlement to file for offered, and three months for unoffered land, and no entry thereof, before his application to file, if within the legal time, will debar him of his right. The action of the Register in refusing to permit the claimant, Daniels, to file his declaratory statement, on the ground that this tract had been previously entered, was, therefore, in total disregard of the law.

Diggs claims to have settled on the 5th July, 1858, and four days thereafter was permitted to enter the land. It is shown that he had claimed this land for some time, and was receiving rent for it, notwithstanding he had never taken any steps to acquire a title thereto from the Government, until after the settlement of the adverse claimant. He was thus a trespasser, and as the claim he now sets up was subsequent in its inception to the settlement of the contestant, by which the right of the latter attached, and since there was an evident attempt on his part to defraud the Government by keeping the land out of market, while he was actually deriving a profit from it, I am of the opinion that such claim is equally destitute of equitable and legal merit.

It has been heretofore held by this Department, that an entry immediately succeeding a pre-emption settlement, is, of itself, sufficient to create a suspicion of fraud, since the law allows a claimant a specified time within which to make proof and payment. In this case, the correctness of that conclusion is plainly manifest; because the circumstances indicate that it never was the true intention of said Diggs to establish his homestead upon the tract in controversy, and since, though holding and renting the land to another, he made no effort to purchase it, until he found that the contestant was about to acquire a right thereto.

Daniels was the first settler, and he has complied with the law so far as can be reasonably required of him in view of the adverse possession and entry of Diggs, and without having any evidence whatever of legal right to occupy the land himself, owing to the erroneous action of the Register. I am, therefore, clearly satisfied that said Daniels should be permitted to complete his settlement, and upon proof of compliance with the law, to enter the land, the entry of Diggs being first cancelled.

Very respectfully, &c.,

MOSES KELLY, Acting Secretary.

Commissioner of the General Land Office.

III. INHABITANCY.

No. 477.

Inhabitancy of land before the extinguishment of the Indian title, or before survey, not fatal to the right of Pre-emption.

DEPARTMENT OF INTERIOR,
March 2, 1857.

Your letter of 27th, in regard to the conflicting claims of Allen and Pike, returned with letter of 25th ult., has been received. The fact, as understood by me, was, that the settlement was commenced previous to the extinguishment of the Indian title and the survey, but continued afterwards in good faith. My decision was merely intended to sustain the point, that it was not necessary for the pre-emptor to make a new settlement, but to prosecute the old one in such a manner as to evidence his *bona fide* intention under the pre-emption law.

R. M'CLELLAND, Secretary.

Commissioner of the General Land Office.

No. 478.

Occasional absences of a settler will not invalidate his right. The Act of 1841, denies the right of Pre-emption to those who quit or abandon their own land, not to those who make an actual sale. Decision in case of Niles v. Larson.

DEPARTMENT OF THE INTERIOR,
October 10, 1857.

The first settlement on the land in dispute was made by Larson, and although it is shown that after moving upon the land, he and his family were absent therefrom at divers times, yet there is no evidence that he had any other dwelling, and his occasional absence would not work a forfeiture of his rights under the pre-emption act.

The sale of the land by Larson, which he owned and on which he resided prior to the commencement of his settlement on the land in dispute, conveyed an equitable title to the purchaser. The contract appears to have been entered into and fulfilled in good faith. The evidence does not justify the belief that any fraud was intended to be practised.

That clause of the Act of 1841, which provides that no person who shall quit or abandon his residence on his own land shall acquire any right of pre-emption under said act, does not apply to cases of this character. It was clearly intended to prevent those persons who should *abandon* their own land, for the purpose of acquiring an additional quantity, from obtaining the benefit of the law, and does not apply to cases in which a *bona fide* sale has been made. You will, therefore, instruct the Register and Receiver at La Crosse, to permit said Larson to enter said land, upon his conforming to the other provisions of the law.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 479.

A claimant required to remove his house on the land claimed, where a mistake had occurred in its location, before his entry is permitted. Decision in the case of the conflicting Pre-emption Claims of Isaac Sager and Thomas Donahoe.

DEPARTMENT OF THE INTERIOR,
March 13, 1858.

At the time Donahoe settled upon the land in dispute, and filed his application therefor, Sager had made improvements thereon and had filed his declaratory statement therefor. It appears to be clear and unquestionable that it was Sager's *bona fide* intention to acquire a right of pre-emption to this quarter-section, and his declaratory statement was evidence and notice of such intention. The question is not clearly settled, whether or not a part of Sager's house was situated on the land in dispute. However, I am of the opinion that this defect may be remedied by the removal of his house upon the land, before his entry is completed, it being perfectly clear that he intended to put it there. The Register and Receiver may, therefore, permit him to enter said tract when his residence shall be fixed thereon, upon his complying with the further provisions of the law.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 480.

A Pre-emption Claimant, who fails to reside on the land claimed, not entitled.

GENERAL LAND OFFICE,
May 29, 1858.

Sir:—I have the honor to enclose herewith, for your examination, the testimony and other papers relative to the conflicting pre-emption claims of James H. Sayre and Stephen Barnes, to the northwest quarter of section 26, township 10 south, range 7, east, in the Ogden, Kansas Territory, District.

The settlements by the parties are alleged to have been made prior to the survey of the land in controversy. The subdivisional lines were run in the field between the 13th and 27th of May, 1857, and both parties filed their declaratory notices within three months thereafter, as required by the Act of 22d July, 1854. (No. 245.)

The Register and Receiver, in their report of 11th November last, decided adverse to the claim of Sayre, and in favor of that of Barnes.

The testimony shows that Barnes took a claim on a tract adjoining the one in controversy, in the fall of 1855, but that he subsequently abandoned it; and early in 1856, (about four weeks after the settlement by Sayre,) commenced building a cabin on the land in dispute, which he moved into on the 30th of May, 1857. This cabin does not appear to have been completed, for it is shown that there was no roof on it one week previous to the trial of the case, to wit, about 3d of November, 1857.

It is uncertain where Barnes made his home from the time of his alleged settlement until the examination of the case. There is nothing to show that he made the land in dispute his permanent home; but on the contrary, the weight of evidence shows that he resided, the greater part of his time, in the town of Manhattan and elsewhere.

James F. Sayre settled about the middle of January, 1856, has made

improvements valued at several thousand dollars, and has continued to reside upon the land, making improvements, ever since.

I am of opinion that the Register and Receiver erred in awarding the lands to Barnes, and would, therefore, recommend that their decision be reversed, and that they be instructed to permit Sayre to consummate his claim by entry.

I have the honor to be,

Very respectfully, your obedient servant,

THOS. A. HENDRICKS,
Commissioner.

Hon. Jacob Thompson,
Secretary of the Interior.

The Commissioner's views sustained by Secretary Thompson, in letter of 29th June, 1858.

No. 481.

A Claimant who spends the greater part of his time on a tract formerly claimed by him, does not become an inhabitant, in the meaning of the law, of an adjoining tract by occasional occupancy thereof.

DEPARTMENT OF THE INTERIOR,
September 13, 1858.

Having revised the proof, and considered the arguments, letters and reports, which accompanied your communication of the 11th ultimo, submitting the pre-emption case of *John R. Shipp v. James A. Butler*, from the Kickapoo, Kansas, Land Office, I herewith return the papers pertaining thereto.

It appears that, before the survey thereof, said Shipp purchased a claim from a former settler, which embraced the land now occupied by his mother, and the tract in controversy. That prior to the survey of the meridian line, on the 17th of September, 1855, improvements were made by said Shipp on both tracts. Lewis Shipp, the father and witness of the claimant, testifies that "from March till September, 1855, the two claims were considered one claim." Any improvements made by said Shipp on the disputed tract prior to the 17th September, 1855, must, therefore, be considered as having been made in connection with those on the adjoining claim. In his first statement he alleges settlement on the land in controversy, on the 19th of September, 1855. No sufficient reason is shown why he should be permitted to change the date of his settlement, and he must, therefore, be bound by his first statement. Butler also claims to have made his settlement on the 19th of September, 1855.

As to the inhabitancy by said Shipp, of the land in controversy, Lewis Shipp, after testifying that his son occupied the house on the land in dispute, on particular nights when witness staid with him, says, "I have reason to think he staid other nights, but as a general thing he did not." John Thornburg testifies, that the claimant Shipp, "has been living, or I have seen him occasionally at work on the claim adjoining the one in dispute; I never saw him at work on the claim in dispute."

John H. Thornburg testifies, that after Butler's settlement he had a conversation with Shipp, and "from that time to the present, Shipp has lived with his mother." It is also in proof, that Shipp's stock is kept, and his washing done on the adjoining claim. In view of these facts, I am of the opinion that said Shipp has not established any valid right to

the land in controversy, as against said Butler, who, it appears, has continued to inhabit and improve the same, from the time he moved there with his family, until the hearing of this case.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 482.

A party who inhabited land prior to the extinguishment of the Indian title, did not thereby forfeit his right to Pre-empt the land.

Where it is alleged that a sale has been made, but the deed is not produced, the evidence should be of a clear and conclusive nature, in order to establish a forfeiture.

DEPARTMENT OF THE INTERIOR,
October 26, 1858.

I have considered your report of the 28th ultimo, in the case of contest for the right of pre-emption in the southeast quarter of section 21, township 4, of range 20, Kickapoo District, Kansas; also your decision of the 24th ultimo, in favor of Topley Ralph, overruling that of the local officers, in favor of Harriet Hudgens, an appeal having been taken from your decision, by S. S. Baxter, Esq., counsel for Samuel C. Halsey.

Before the local officers, there were six different claimants for this quarter section. Two have abandoned their claims, leaving the contest to the three parties above mentioned, and one Augustus Morgues. It is admitted, and was clearly proved on the trial, that Ralph was the first to improve and reside upon the land, and that his residence and cultivation extended to the date of the hearing before the local officers. It was claimed, in behalf of the other parties, inasmuch as his first location and improvements were made prior to the extinguishment of the Indian title, and his declaratory statement alleged a day of settlement accordingly, that he is not entitled to enter the tract by pre-emption; and of this opinion were the local officers. You have, however, properly overruled that opinion, holding that where the party applying to enter the land has shown, that after the extinguishment of the Indian title, he was the first to inhabit and improve the tract, and where such inhabitancy and improvement were in good faith, and prior to the filing of his declaratory statement, that he has established a right paramount to that of subsequent settlers, which should not be set aside because of the variance between his declaratory statement and the proof. The other objection to the claim of Ralph, which appears to be worthy of notice, is, that he has forfeited all right, because of sundry agreements claimed to have been made by him, respecting the title of some part of the quarter section in dispute; and, because at one time he took steps toward making the tract an addition to the town of Wathena, in company with other persons. The agreements, or articles of writing, relied on to show that the title which Ralph would acquire, on the admission of his claim, would enure to the benefit of others, in part, (if any exist,) appear to be in the possession of some of the adverse contestants, and are not produced in evidence, whilst parol evidence of their contents is offered. In view of the confused statements in regard to such agreements, or sales, I am of the opinion, that the evidence is not of that clear and conclusive nature, which is requisite to establish a forfeiture. Nor do the steps which it is shown were taken by Ralph, for making an addition to the town of Wathena, show that he is not *now seeking* to perfect his pre-emption claim in good faith.

All the circumstances show, that in this case, it was ignorance and the want of a wise judgment, which led the claimant to a course which would create a well-grounded suspicion against his application, if that suspicion was not met, and, to a great degree, removed by the history of his settlement and residence on the land for more than three years.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 483.

Actual inhabitancy by a Pre-emption Claimant must be shown. A claimant who was driven from the land, may still establish his right.

DEPARTMENT OF THE INTERIOR,
November 4, 1858.

I herewith return the papers received with your letter of 21st of September last, in the case of *Silas F. Hail v. George C. Owen*, each claiming the right of pre-emption to the southwest quarter of section 35, township 8 north, range 14, east, in the South Platte District, Nebraska Territory. The testimony shows that said Hail commenced improvements upon said land in May, 1856; that he rented to one Warden a house that had been previously built thereon; that said Hail made other meagre improvements, prior to June, 1857; that he slept upon the land about thirty nights, during the first year that he claimed the same, and that he did not finish the house commenced by him, until about thirteen months after his settlement is alleged to have been made. Hail does not appear to have been a *bona fide* settler, within the meaning of the law, and even in the absence of a contest, should not have been allowed the right of pre-emption. His entry must therefore be cancelled. It appears that said Owen, about the 20th of June, 1857, commenced building a house upon the land, that the same was burned down the day after, and that he was deterred by threats, and fears of bodily harm, from consummating his right of pre-emption. He has not, therefore, forfeited said right, but may hereafter, upon making proof of settlement, inhabitancy, and improvement, and upon complying now with the provisions of the law, be permitted to enter said land.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 484.

The law only requires that a Pre-emption Claimant shall have a dwelling on the land claimed.

DEPARTMENT OF THE INTERIOR,
November 18, 1858.

Sir:—The papers received with your letter of the 5th instant, pertaining to the pre-emption claim of Anderson Graham, to a certain tract of land in the Monroe, Louisiana, District, which is adversely claimed by William S. Grayson, under an internal improvement warrant location, are herewith returned. There is no question but that said Graham is a *bona fide* settler on the land in controversy, and the only objection urged against his right of pre-emption is, that he did not *erect* a dwelling house thereon. He had

however, purchased a building, which had been erected by a former settler, in which he resided, and still resides. He therefore *has* a dwelling on the land, and this is all the law requires on that point.

Your decision in favor of the right of said Graham, to enter the land claimed by him, is hereby affirmed, and the patent will accordingly be delivered to him.

Very respectfully,

Your obedient servant,

J. THOMPSON, Secretary.

Hon. Thos. A. Hendricks,

Commissioner of the General Land Office.

No. 485.

Inhabitaney of public land before their survey, will neither constitute the basis of a right, nor create a disability of Pre-emption.

DEPARTMENT OF THE INTERIOR,
December 28, 1858.

Sir:—Having considered your report and the papers connected with the appeal of the attorney for the New Orleans, Opelousas and Great Western Railroad Company from your decision approving the pre-emption claims of Theodore F. Thieneman, Frederick Miller and Camille St. Amant, to lands in sections 1 and 2, township 14 south, range 20, east, I am of the opinion that the evidence and facts in the case fully establish the rights of the said pre-emption claimants to the lands in question.

You report that the claims referred to were cancelled in 1856, for the reason that the settlements by the respective claimants were made before the survey.

That in 1857, "representations having been made to the effect that the settlements were commenced after the survey," testimony was ordered to be taken on this point. That from this testimony it appears that although the settlements of the parties were commenced before the survey, the claimants continued their improvements after the surveys were made, and you decided that the claimants "were entitled to the pre-emption privilege." The only question presented for my decision in this case is, whether the fact that the pre-emption claimants settled upon the lands prior to the public survey thereof, would incapacitate or disqualify them from acquiring a right of pre-emption thereto. This question was decided in the case of *Savie v. Collingham*, referred to in your report, and I find nothing in the arguments and papers in the present case, to change or modify my views upon it. A pre-emption settlement under the Act of 1841, *as such*, cannot commence upon the public lands until the same are surveyed, because the said act provides for pre-emption only on surveyed lands. The word "settlement," as used in the pre-emption laws, has a peculiar and technical meaning. A squatter's residence and improvement upon unsurveyed lands does not constitute a "settlement" as contemplated in the Act of 1841. But the said act does not annex the penalty of a forfeiture of all right to acquire lands by pre-emption or otherwise after they have been surveyed, because the party claiming such right may have moved and resided upon the lands claimed before their survey.

No right of a resident on the public lands, under such circumstances, will attach to the lands upon which he so resides, before they are surveyed. Immediately upon such lands being surveyed, however, they become sub-

ject to pre-emption, and if a prior settler should then proceed to give notice, or if he has already filed his declaratory statement, and does not withdraw or revoke the same, and shall comply with the requirements of the law in other respects, his right of pre-emption will be complete. His inhabitancy of the lands before survey, would neither constitute the basis of a right, nor create a disability of pre-emption.

Patents will accordingly be issued to the above-named pre-emption claimants.

The papers submitted to this Department on the 8th ult., are herewith returned.

Very respectfully,

Your obedient servant,

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 486.

A party whose original claim was rejected for non-inhabitancy, may, in a particular case, be permitted to make proof of continued residence, &c.

DEPARTMENT OF THE INTERIOR,
January 7, 1859.

In the case of *Taylor v. Bell*, from the land office at Superior, Wisconsin, which was returned to your bureau on the 15th ult.,* it has been represented to this Department that, since the date of the hearing before the Register and Receiver, the said Taylor has inhabited the land claimed by him, and still continues to inhabit the same; and application has been made in his behalf for permission to be granted him now to make proof in support of the right of pre-emption which he claims.

The decision heretofore rendered adverse to the claim of said Taylor, was based upon his failure to comply with the law with regard to inhabitancy. The testimony in the case fully shows that he had not, at the time of the hearing before the Register and Receiver, inhabited the land so as to entitle him to the right of pre-emption thereto. If, however, he is now prepared to show a compliance with the requirements of the law, no objection is perceived to allowing him to produce proof in support of his alleged right of pre-emption, upon due notice being given to all parties interested, and to all adverse claimants, if any there be, who will be permitted to attend and contest the same.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 487.

The fear of bodily harm may excuse a Settler for abandoning his settlement until the cause of fear is removed, but no longer.

DEPARTMENT OF THE INTERIOR,
Washington, August 5, 1859.

Sir:—The case of George W. Goss and Napoleon B. Short, contestants for the right of pre-emption to the southeast quarter of section 1, township 13 south, range 19, east, Lecompton district, Kansas, which was submitted

* See No. 449.

with your report of the 29th March last, is one that has elicited much conflicting testimony, and strong expressions of counsel on each side, in favor of their respective clients.

The Register gave a strong opinion in support of the claim of Short, and the Receiver an able one in favor of the right of Goss. The first conclusion of your office, was in support of the Register's view of the case; but now, on a personal re-examination of the testimony by the commissioner himself, he submits his recommendation in favor of a reversal of the land office decision of the 20th January, 1859. Having examined the case with care, I am satisfied of the legality and justice of the general conclusions of his report, and therefore hereby reverse the decision of the General Land Office, of the 20th January, 1859, and award the entry of the land to George W. Goss.

I am constrained to say that those views of the case, which would lead to a conclusion in favor of Short, appear to me to be based upon a misapprehension of the true scope and intent of the laws conferring pre-emption rights in cases of this kind. The pre-emption laws are designed for the benefit of *bona fide* settlers on the public lands, who are otherwise qualified, and who have gone there and established themselves in a home of their own. Hence, the Act of 1841 says, that the pre-emptor "has made, or shall hereafter make, a settlement in person on the public lands, and * * shall inhabit and improve the same, and who has, or shall erect, a dwelling thereon." These phrases are brought together in the law by the copulative conjunction. A personal settlement, inhabitancy, improvement, and the possession of a dwelling-house on the land, are all required.

Short effected an entry of this quarter-section on the 28th November, 1857, without notice to Goss, who was, at the time, living on the land and in possession of extensive improvements. The fact that Goss had filed his declaratory statement was not noticed, not being marked on the plat. Soon after the entry, this mistake was discovered, and on the application of Goss to contest, both parties, by mutual consent, and in presence of opposing counsel, brought forward their testimony before the Register, to support their claims.

In August last, a re-investigation having been ordered by your office, before that testimony had been forwarded, it was thereafter, by agreement of parties, transmitted for the decision of the case thereby, as though it had been regularly taken, after the order was made.

It is from that testimony alone that my conclusions have been formed. On examination thereof, it appears that the tract in controversy was surveyed in May or June, 1856, and that both the claimants filed their declarations directly thereafter, as required by the twelfth section of the Act of Congress, of the 22d July, 1854.

That Napoleon B. Short, about the 1st November, 1854, had commenced the erection of a house, which we will assume was upon the land in dispute, (which is not entirely clear, however,) and had raised it to the height proper for it to receive a roof. This house was within the claim lines of one Jonathan F. Morgan, who notified Short of the fact, and objected to its erection. That Morgan made complaint to an organization called the Squatter's Association, by which he was furnished with assistants, who went with him, and in his presence, and by his encouragement, tore down the house and hauled the logs into the town of Lawrence, where they were afterwards built into a log-house.

Short, however, who was present when his cabin was torn down and moved off, remained upon the land for three days thereafter, and his reason for then abandoning it without further attempt at improvement was, that

he had been threatened, on the occasion of pulling down the cabin, with personal violence, if he should attempt to build another on that claim. The fear of bodily harm, may excuse a settler on public lands for abandoning his settlement till the cause of fear is removed. We may say, that Short was justifiable in abandoning this land on the 20th November, 1854. But, it appears, that not long after those occurrences, and long before the public surveys were made, Morgan, who had instigated the demolition of Short's house, and the threats against him should he erect another, sent him word that if he would return, and settle again in the same place, he would help him, and would compensate him for the destruction of the house.

This message from Morgan to Short, was sent a second time by another witness, but it does not appear that Short responded by word or action, that he would return to his settlement. After this, what excuse had Short for remaining away from the land longer? The threats against pro-slavery men, that they would find it too hot for them to live in that community, did not affect Short, for he continued to live in the community for twelve or fifteen months after those threats were made; and it is not shown that there was greater reason, on account of political sentiments, for a man to fear to live on a farm near by the town, or on this particular land, than to live in the town itself.

It was the threat against putting up another house on the claim, that justified his leaving it. But when this threat was withdrawn by the man whose interests and instigation prompted the threat, the justification for the original abandonment no longer remained good against future neglect. When this second message was sent, it was spring, the very season of the year which he ought to embrace for the cultivation and improvement of a tract of land on which he had settled, and which he was intending to inhabit, cultivate and improve, as his present and future home. All that he did, was to cause a few logs to be taken back on the tract by one Corell. It is not shown that he went there in person, or ever attempted to put those logs into another house, or to improve and cultivate the land. In November, 1857, however, he went back upon the land, then covered with extensive and valuable improvements, in some parts of it, and erected a frame shanty, of a temporary character, in which he staid a few days, and then went to the District Land Office and made his entry, uncontested. After this he does not appear to have returned to the land, for his brother, under date of December 10th, 1857, speaks as though Napoleon Short's residence was, at that time, in Leavenworth, and had been there for eight months last past.

Such is the history of Short's connection with the land. It is clear that he has not inhabited, cultivated and improved it, as the law requires. His first settlement, admitting that it was fully effected and completed in good faith, was abandoned, because he was afraid to begin building a second house there. When that fear, and the cause for it, had both passed off, he did not return; and thereafter his abandonment became voluntary. Meantime, Goss, so far as Short is concerned, finds the land unoccupied. He settles, improves, files in time, and shows amply, a compliance with the requirements of the law. It is clear to me, that Short could not go back in 1857, and by erecting a temporary shanty, which he could have built as well in 1855, obtain the benefit of all the improvements which Goss had made in the meantime.

It may be admitted, that Short set up a claim to this land in 1854, that he gave notice of his claim and of his intention to pre-empt it, and that Goss was well aware of all this, but neither Goss, nor any other adverse claimant was bound to notice Short's claim, any further than as a matter of

caution. He would have to notice, however, the settlement, occupancy, residence and cultivation of his adversary, his legal qualifications to take a pre-emption right, his filings, and other acts, done under the law. Taking due notice of these, they did not entitle Short to the land, and we cannot deny to Goss the right to enter, as the next settler in order of time, who has done upon the land, and off of it, what the law requires; and having done which, he has clothed himself with the right which the law bestows on him in preference to others, viz., the right to enter the land at the minimum price.

The papers in this case are herewith returned to your office, and as so much warm discussion has been elicited on both sides, I suggest that copies of the Commissioner's report of the 29th March last and of this decision, be communicated to the local officers, for the information of the parties and their attorneys.

J. THOMPSON, Secretary.

The acting Commissioner of the General Land Office.

No. 488.

It is not essential that a Pre-emption Claimant should have resided upon the land, to entitle his heirs to the right of entry.

DEPARTMENT OF THE INTERIOR,
August 12, 1859.

Sir:—The Register and Receiver at Kickapoo, Kansas Territory, have reported in the case of the *Heirs of John Fee, deceased*, v. *John T. Brady*, "that Fee, in his lifetime, settled on the land in dispute, several months previous to the time that Brady went on to the same, that said Brady went on said land by permission of Fee, before the legal survey of the same was made, with the understanding that if his house should fall on Fee's claim, he, Brady, would abandon the same," and "that although at the time of his death said Fee was not on the land in dispute, not having completed his dwelling house, yet it is obvious his intentions were those of a *bona fide* settler," and they conclude that "Fee's heirs are entitled to pre-empt the land in dispute." You have affirmed this decision, and upon an investigation of the facts of the case I am satisfied that such action is in conformity with the law of the case. Fee was entitled to "claim the benefit," of the pre-emption law, and his heirs are now entitled to the land.

The papers which accompanied your letter of 30th May last, are now returned.

J. THOMPSON, Secretary.

Joseph S. Wilson, Esq.,
Acting Commissioner of the General Land Office.

No. 489.

An unmarried Pre-emption Claimant must inhabit the land claimed by him.

DEPARTMENT OF THE INTERIOR,
August 16, 1859.

Sir:—The papers in the case of *Milton Taffe* v. *William Babcock*, the former claiming the right of pre-emption to a certain tract of land, which

was entered by the latter, situated in the Springfield, Illinois, District, have been examined, in connection with your report of the 16th May last, and are herewith returned.

One of the positive requirements of the pre-emption law is, that the claimant of its benefits shall inhabit the land he claims. The counsel for said Taffe, in assuming that said claimant, being a single man, the law does not imperatively require "that he should actually reside on the tract of land," has taken a position which is altogether untenable. Your action in cancelling the certificate of said pre-emption claimant, for non-compliance with the law and instructions, is accordingly hereby approved. The rights of the adverse party will be determined by your bureau, in accordance with its established rules.

Very, &c.,

MOSES KELLY, Acting Secretary.

Commissioner of General Land Office.

No. 490.

The law does not allow twelve months to a Pre-emption Claimant to commence his residence on the land claimed; and a failure to inhabit the same within that time, would work a forfeiture.

DEPARTMENT OF THE INTERIOR,
August 26, 1859.

Sir:—An examination of the case from the Fort Des Moines, Iowa, Land Office, involving the pre-emption claim of Robert Hedge, contested by Jarvis E. Neal, under a private location of a land warrant on the same land, shows that Hedge alleges settlement on the land on the 3d of July, 1857; that he filed the required notice in due time, and that about the 2d of July, 1858, he went upon the land and remained one night, which constitutes the only inhabitancy of the land within the year, that he has shown. The law does not allow twelve months to a pre-emption claimant to commence his residence upon the tract claimed; and a failure to inhabit for that length of time, unless under circumstances of an extraordinary character, would work a forfeiture of the right of pre-emption. In this case, the facts indicate evasion and bad faith; and I coincide entirely in the opinion expressed by you, adverse to his claim. The location of Neal being prior in date to that of Hedge, though, during the pendency of a pre-emption claim, was valid, and the patent should be issued to said private locator.

I enclose herewith the papers received with your letter of the 8th ultimo.

Very, &c.,

MOSES KELLY, Acting Secretary.

To the Commissioner of the General Land Office.

IV. TOWN SITE CLAIMS.

No. 491.

A Mayor may enter town site lands under the Law of 1844. (No. 79.)

ATTORNEY GENERAL'S OFFICE,
March 21, 1859.

Sir:—In compliance with the request contained in your letter of this date, relative to the suspended entry of the town site, I have to say that

I can see nothing on the face of the entry which ought to prevent a patent from issuing. It was made by the mayor. The Commissioner of the General Land Office thought at first that it should have been made by the city council. The Act of 1844, which governs the subject, does not say that it must be done by either, but by "the corporate authorities." Now the mayor is no less a portion of the corporate authorities than the council. Besides I do not know (and I suppose you do not,) whether there is any council under the charter of Kearney city. At all events, it appears that the mayor, being an official organ of the city corporation, has made an entry with the assent of all other parties. The presumption is a fair one, that he was authorized to do so. If he was, then he is the proper corporate authority. It is very clear, that when the mayor, in the execution of his official duty, entered the land on which the city stands, acknowledging all the proper obligations and trusts which he could and should have assumed for the benefit of the inhabitants, their title (that of the inhabitants) became perfectly good, and that it must be enforced in any court of law or equity. The object of the law was to give the owners of lots a good title to their property. When the patent issues under this entry they will have a good title; and I do not see the practical use nor the legal necessity of requiring another entry to be made; this opinion applies also to the case of Nebraska city,

I am, respectfully, yours, &c.

J. S. BLACK.

Hon. J. Thompson, Secretary of the Interior.

No. 492.

If the lands embraced in the application of the County Judge, under the Act of 23d May, 1844, were selected and occupied as a town, no neglect to enter would restore them to Pre-emption under Act of 1841.

DEPARTMENT OF THE INTERIOR,
August 18, 1856.

I return herewith, the papers in the conflicting claims of Johnson Cotton and Chester W. Pitt, which accompanied the letter from your Office of the 10th ultimo, on appeal from the decision of the land officers at Minneapolis, Minnesota Territory. It would appear that these conflicting claims interfere with a prior application by Judge Chatfield, in behalf of the town claimants of the town of Keposia, under Act of 1844, but that in consequence of the town pre-emption not having been proved up before the day of public sale of the surrounding land, and therefore as alleged, for-

A tract of public land within the limits of the City of Chicago, having been reserved for a fort, and public buildings placed thereon, a portion of the tract was afterwards sold, pursuant to a plan on which the whole tract was laid down, as divided into lots and streets. The Court decided, that it was not within the corporate powers of the city to open these streets on the land not sold to private persons.—*United States v. Chicago*, 7 How. 185; 17 Condensed Reports, 82.

Portions of the public lands, to the amount of three hundred and twenty acres, may be taken up by individuals or pre-emptioners, for city or town sites.—(Opinion of Attorney-General, vol. 7, p. 733.)

The same rules as to proof of occupation, apply in the case of municipal, as of agricultural pre-emption.—*Ib.*

feited, the conflicting claims of the pre-emptors are alone considered, and a determination made as if no town claim had ever been made, or had ever existed.

If the land embraced in the application of Judge Chatfield, was "selected" and "occupied" as a town site, it was thereby taken out of the purview of the pre-emption Act of 4th September, 1841, and was not subject to its operations, and no abandonment of the town proprietors of their rights to make proof and entry of their claim, could restore the lands thus excepted from the operations of the law of 1841.

If there was therefore such town, neither Cotton nor Pitt has any right to any portion of the land embraced in the application of Judge Chatfield, defining the limits claimed for said town.

If there was no such town, then the decision of the land officers in favor of Cotton is approved, &c.

R. M'CLELLAND, Secretary.

Commissioner of the General Land Office.

No. 493.

Construction of the Act of 23d May, 1844, given. Half-breed Indians who had availed themselves of treaty stipulations, as such, are not entitled to the benefit of the Pre-emption law.

A selection of lands for a Town site, unaccompanied by actual occupation, will not be recognized.

The parties for whose benefit application is made to enter a Town site, must be residents thereon.

DEPARTMENT OF THE INTERIOR,

June 26, 1858.

Sir :—I herewith return the papers which were submitted to this Department by your letter of the 18th of February last, pertaining to the case involving the conflicting pre-emption claims of the alleged proprietors of Superior City, claiming the right to enter fractional section 13 and a portion of fractional section 24, township 49 north, of range 14, west, in the Fond du Lac, Wisconsin, Land District, under the Act of 23d May, 1844, which is contested by Charles Brissett, Antoine Warren, Basil Dennis, and Vincent Roy, within whose entries, under the Act of 1841, the said land is included.

The said parties,—Brissett, Warren, Dennis, and Roy,—are persons of the class or description known as mixed bloods of the Chippewa Indians of Lake Superior. By article fourth of the treaty with the Chippewa Indians, dated the 2d day of August, 1847, it is stipulated "that the half or mixed bloods of the Chippewas residing with them shall be considered Chippewa Indians, and shall, as such, be allowed to participate in all the annuities which shall hereafter be paid to the Chippewas of Mississippi and Lake Superior, due them by this treaty, and by treaties heretofore made and ratified."

By the 7th clause of the 2d article of the treaty with the Chippewas of Lake Superior, dated 30th of September, 1854, it is stipulated that "each head of a family or single person over twenty-one years of age at the present time, of the mixed bloods belonging to the Chippewas of Lake Superior, shall be entitled to eighty acres of land, to be selected by them under the direction of the President, and which shall be secured to them by patent in the usual form."

That these claimants, under the Act of 1841, are of the class comprehended within the terms of said last quoted clause, is obvious and unquestionable.

In addition to the testimony of witnesses with regard to the fact that the names of said claimants were on the pay-rolls of the Indians, and that they received annuities at the time different payments and distributions were made, it appears by the certificate of the second auditor of the Treasury filed in this case, that their names were on the half-breed list following the annuity roll of the Chippewa tribe of Indians of Lake Superior, and the payments to them are attested by witnesses who certify under date of 15th September, 1855, that the signatures or marks of the several Indians and mixed bloods were affixed to the receipt roll in presence of said witnesses.

The name of each of said pre-emption claimants appears on the list of persons entitled to claim land under the seventh clause of the second article of the treaty of 1854, received in the General Land Office from the Commissioner of Indian Affairs.

Being thus entitled, by reason of their Indian character, to certain rights and privileges conferred by treaty, and having, to some extent, derived the benefits and advantages secured to them thereby, I am not disposed to regard the claim which they now assert to the right of pre-emption as citizens of the United States, with any special favor and consideration. But these parties have entirely failed to show that they have settled upon and improved the land claimed by them in good faith for their own use and benefit. The facts disclosed by the evidence on file indicate beyond reasonable doubt that they were the employees of others, under whose direction and for whose benefit they were acting.

In view of the facts hereinbefore stated, the pre-emption entries of the said parties, Charles Brisset, Antoine Warren, Basil Dennis, and Vincent Roy, Jr., are invalid, and I hereby direct that the same be cancelled.

The Act of 23d May, 1844, (No. 79,) entitled "An act for the relief of citizens of towns upon the lands of the United States under certain circumstances," provides for the entry of any portion of the surveyed public lands which has been or may be settled upon and occupied as a town site. The title, as well as the words employed in the body of the act, clearly demonstrate that the same was intended to apply exclusively to actual and existing towns. It refers to and recognizes only such surveyed public lands as are settled upon and occupied as a town site, not such as have been selected by non-resident proprietors, or claimants, as the site for a city or town, as exempt from entry under existing pre-emption laws. There is no provision made for filing notice of selection, and the act does not specify or contemplate any proceedings whereby lands which have merely been so selected shall be excluded from the operation of other pre-emption laws.

Prior to the passage of this Act of 23d May, 1844, it was the policy and settled practice of the government to prohibit the sale or acquisition by pre-emption, of lands which were occupied as town sites or trading places, the object of such prohibition being to secure the interests of the government by the sale of the lands at their enhanced value, in such manner as might be deemed best calculated to effect that object.

That clause in the Act of 1841, which provides that no portions of the public lands which have been selected as the site for a town shall be liable to entry under and by virtue of its provisions, cannot, therefore, be construed to recognize the right of selection by individuals, of portions of the public lands for town sites for their own use and benefit, since at that time the system of granting rights of pre-emption on lands of that character had not only not been adopted, but was directly at variance with the established

practice and policy. It was manifestly not the object of the law to withhold from pre-emption such lands as individuals might designate or select without authority as the site for a probable or prospective city or town. If so, it would have been within the power of any person or persons to defeat the pre-emption claims of those whom they were interested in opposing, by alleging that the particular land upon which such claimant had settled, had hitherto been so selected.

It was, then, not intended by said clause of the Act of 1841, to withhold lands which might be regarded as eligible, or adapted for town purposes, from pre-emption, until claimants should have an opportunity to make settlements and improvements, since at that time it was not to protect the interests or supposed rights of citizens of cities or towns that such lands were withheld and excluded from pre-emption, and therefore the supposition that said clause would recognize and protect from the claims of others such selections, is erroneous.

The Act of 23d May, 1844, further provides that the lands so settled upon and occupied shall be entered in trust for the several use and benefit of the occupants thereof. Referring to the title of the Act, "For the relief of citizens of towns," &c., it may be easily determined that by the term "occupants" is meant those who are settlers or residents, and that it only embraces the citizens thereof. The parties for whose benefit and in whose behalf the application, dated September 9, 1856, and signed by Michael S. Bright, county judge of Douglas county, was made, have not shown that they are occupants within the meaning of the law, nor does it appear that there are not occupants of the town who would be entitled to the benefits of the law in preference to the so-called "proprietors of Superior City."

Said act further provides that the entry of the land intended by this act shall include only such land as is actually occupied by the town, and shall not, in the whole, exceed three hundred and twenty acres.

The Act of 1841, provides for the entry of any number of acres not exceeding one hundred and sixty, or a quarter-section of land, by those claiming the right of pre-emption under it. The limitary words of the two statutes are essentially different. The one limits the entry to such lands only as are actually occupied by the town; the other gives the right of acquiring any number of acres not exceeding a quarter-section.

Before an entry is permitted under the Act of 23d May, 1844, it must be shown that one or more of the legal subdivisions of the public lands is actually occupied by the town, and the nature, extent, and sufficiency of such occupation must be determined by the facts in each particular case.

The application above mentioned, to obtain the benefit of the Act of 1844, not being consistent or in accordance with the views hereinbefore expressed, is hereby rejected.

Very respectfully, your obedient servant,

J. THOMPSON, Secretary.

Hon. Thos. A. Hendricks,
Commissioner of the General Land Office.

Same subject.

DEPARTMENT OF THE INTERIOR,
Washington, June 30, 1858.

Sir:—The papers received with your letter of the 18th ult., in the case of the pre-emption claim of Thomas C. Healy, to certain land in the Minneapolis, Minnesota, District, contested by the alleged proprietors of the town site of "Waverly," are herewith returned.

The mere selection, by persons claiming to be the proprietors of a town site, who do not reside thereon, of portions of the public lands, with a view of making improvements at a future time, does not exempt such lands from the operation of the Act of 4th September, 1841. The Act of 23d May, 1844, authorizes the entry of any portion of the surveyed public lands which have been, or shall be, settled upon and occupied as a town site, and, *therefore*, not subject to entry under the existing pre-emption laws. It also requires that the entry shall be made in trust for the several use and benefit of the occupants thereof, and such entry will embrace only such legal subdivisions as are actually occupied by the town.

The evidence in this case does not show which particular subdivisions of the land claimed are occupied by the town, nor whether the claimants are occupants thereof.

With regard to the settlement of Healy, more satisfactory proof that the same was made in good faith, and that he has complied with the provisions of the law, so far as it has been in his power so to do, will be required.

You are, therefore, requested to remand this case to the Register and Receiver, with instructions to require additional testimony to be produced upon the points above mentioned.

Very respectfully, your obedient servant,

J. THOMPSON, Secretary.

The Commissioner of the General Land Office.

No. 494.

Under the Town Site law, the only beneficiaries of the trust are the occupants of the town.

Between different Trustees, or parties claiming to be such, no preference will be given to the first applicant.

After incorporation, the "corporate authorities" become the legal Trustees, and the authority of the county judge is superseded.

Only such land as is "actually occupied," can be entered.

DEPARTMENT OF THE INTERIOR,
Washington, July 9, 1858.

Sir:—Your report of the 8th December last, has presented for my consideration, on appeal, the application filed by the corporate authorities of Monticello, and Lower Monticello, and the claim of Tobias G. Mealy, to enter by pre-emption, certain tracts in the district of lands exposed to sale at Sauk Rapids, now St. Cloud, Minnesota.

These applications conflict with that filed by the judge of the county court, to enter the town site of Moritzions. The judge claims adversely to the corporate authorities of Monticello, as to the northwest quarter of the southeast quarter of section 11; adversely to Tobias G. Mealy, as to

the southwest quarter of the southwest quarter of section 12; and adversely to the corporate authorities of Lower Monticello, as to lot No. 1, and the east half of the southeast quarter of section 11, and lots Nos. 2 and 3, of section 12, all in township 121 north, range 25, west.

The application of the county judge, was filed in the local land office, April 6, 1857, that of the corporate authorities of Monticello, and that of Tobias G. Mealy, on the 27th of May following, and that of the corporate authorities of Lower Monticello, July 9, 1857.

The testimony taken in support of these claims, was concluded in August last, and the Register and Receiver decided against the claim of the county judge, and in favor of the other parties; and from that decision an appeal has been taken to this Department.

It appears from the testimony, that the incorporated town of Monticello, the county seat of Wright county, Minnesota, is situate on the lands, or some portions of the lands, sought to be entered by the corporate authorities of said town. It also appears, that there is a town situate principally, if not entirely, on lot 3, of section 12, and lot 1, of section 11, which has been incorporated under the name of Lower Monticello, by an Act of the Territorial Legislature, approved May 19, 1857, entitled "An Act to incorporate certain towns."

In behalf of the application of the county judge, it is contended, that this town is legally and properly named Moritzions, by virtue of a survey and claim, and the making and recording of a plat, by the proprietors of "Moritzions," prior to the survey, claim, and plat of the proprietors of "Lower Monticello;" and that the application to enter having been made before the town was incorporated as "Lower Monticello," takes precedence of the subsequent claim of the corporate authorities, to enter the same lands.

In deciding the case, I am governed by the Act of Congress, approved, May 23, 1844, (No. 79,) entitled, "an Act for the relief of citizens of towns, upon lands of the United States," &c., &c., which provides, "that whenever any portion of the surveyed public lands has been, or shall be settled upon and occupied as a town site, &c., &c., it shall be lawful, in case such town or place shall be incorporated, for the corporate authorities thereof, and if not incorporated, for the judges of the county court for the county in which such town may be situated, to enter at the proper land office, and at the minimum price, the land so settled and occupied, in trust for the several use and benefit of the occupants thereof, according to their respective interests."

It is also by the same act provided, that the entry shall be made before the commencement of the public sale of the body of land, in which it is included, and that the "entry shall include only such as is actually occupied by the town, and be made in conformity to the legal subdivisions of the public lands, authorized by the Act of 24th April, 1820, (No. 12,) and shall not in the whole exceed three hundred and twenty acres."

It will be remarked, that this law provides that an entry of public lands, which have been actually settled and occupied, as a town-site, may be made by a trustee, for the use and benefit of the occupants.

The only beneficiaries of the trust, are the occupants of the town. This law recognizes no other proprietors, and this Department cannot recognize or protect claims or interests of non-resident shareholders, or lot owners.

In regard to the "occupants" of any town or place entitled to the benefit of the Act of Congress, under review, their rights and interests remain the same, are fixed by the same laws, and must be determined and secured to them, on the same principles, whoever may be trustee or trustees of the legal title to the lands. They cannot, therefore, so far as the action of the

officers of the Land Department is concerned, be supposed to have any direct interest in having the legal title vested in any one except the party legally qualified to accept and execute the trust.

The Act of May 23, 1844, in my opinion, recognizes but one trustee as legally entitled to make an entry of a town-site, and his qualifications must be judged of, and found to be legal, at the time the entry is admitted, and not at any previous time. Between different trustees, or parties claiming to be such, who are seeking an entry of the same land as a town-site, no preference is given to the first applicant. The proper question for the officers of this Department to consider, in such cases, is which is the party recognized by the law, as having the qualifications to accept the trust.

Should we admit therefore, in this case, that the application of the county judge, on the 6th of April, 1857, to enter the town-site of Moritzions, was sufficient, and in the proper form, and accompanied by a tender of payment, and that he was at that time the legally recognized trustee, the fact still remains, that the entry was not admitted at that time.

Before any entry was effected, viz., May 19, 1857, the town was incorporated by the name of "Lower Monticello;" and after that incorporation the corporate authorities became the legal trustees for the occupants of the town, and we accept them as the proper parties to make the entry. By the incorporation, the authority of the county judge is superseded and concluded.

As to the quantity of land which the trustee or trustees may enter for the use and benefit of the occupants of a town, that is clearly limited to "such land as is actually occupied by the town,"—that is, actually used by the residents of the town, for town purposes; the entry must "be made in conformity to the legal subdivisions of the public lands," and "shall not in the whole, exceed three hundred and twenty acres," even though it might happen that more than that number of acres are occupied.

In case of the two towns of Monticello and Lower Monticello, the local officers may receive any further testimony, respecting the state of facts existing at the time, at which they may fix upon, to consider the matter; and should admit the entry, by the corporate authorities respectively, for so much land, by legal subdivisions, as is shown by satisfactory proof, to be actually used and occupied for town purposes. In the application of the party seeking an entry of this kind, and in the certificate of the Register of the sale of the lands, I deem it eminently proper, if not actually necessary, that it be set forth that the entry is for the use and benefit of the occupants of the town.

The papers which accompanied your report, are now returned, and the case may be remanded to the local officers for further proceedings, in accordance with the foregoing views. The claim of Tobias G. Mealy, is good for the land he seeks to enter by pre-emption, and he should be permitted to complete his entry.

Very respectfully,

Your obedient servant,

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 495.

GENERAL LAND OFFICE,
October 18, 1858.

Gentlemen:—This Office has had under consideration the case of the "Portland City" claim, in townships 1 north, and 1 south, range 1, east,

Oregon, the subject of the Register's letter of the 24th March last, and also has examined certain donation claims, covering the town site, and hereinafter designated, which have been preferred under the Oregon Donation Act of 27th September, 1850, (No. 181,) which are treated of in the voluminous documents received at this Office, and discussed in elaborate arguments of counsel, the last of which, (by Mr. Currier,) was received on the 27th ultimo. It appears—

1st. That in 1843, Wm. P. Overton, the original claimant, set up a right by possession to six hundred and forty acres, embracing the lands in question.

2d. That, in virtue of a sale he made in that or the year following, the said Wm. P. Overton and A. L. Lovejoy became the joint claimants.

3d. That in 1845, Overton sold his half to F. W. Pettigrove, by which, in that year, (1845,) Lovejoy and Pettigrove became the joint claimants.

4th. That, in the same year, Lovejoy sold his one-half of the claim to Benjamin Stark; so that, later in the same year, (1845,) Pettigrove and Stark became the joint claimants.

5th. It further appears, that in October, 1848, Pettigrove sold his interest to D. H. Lownsdale, who gave to said Pettigrove a bond to make good the title to lots which had been sold by said Pettigrove and Stark.

6th. It further appears, that Job M'Namee moved on the Portland claim in the spring of 1846, purchased four lots in the town from Pettigrove, and remained improving these lots until 1847, when he went to Vancouver, and took a section of land adjoining that place, but abandoned it, returned to Portland, and, upon the ground that he had discovered a defect in Pettigrove's title to him for the lots, he recorded, in that year, a claim in his own name, and continued to claim with Pettigrove until 15th February, 1848, when the weight of testimony shows, in the opinion of this Office, that he abandoned the Portland claim, having secured his title as lot holder to the lands he had purchased by the compromise then made with Pettigrove.

This, in regard to M'Namee, is the judgment of the Surveyor-General in his report of 24th June, 1853, and we affirm it.

7th. We now return to Lownsdale and Stark, and find that, on 30th March, 1849, the former sold the Portland claim to Stephen Coffin, but, on that day, by agreement, Coffin was to procure title, and deed half the claim to Lownsdale; that, on the 13th December, 1849, that agreement was cancelled, and on the same day, by another agreement, D. H. Lownsdale, S. Coffin, and W. W. Chapman, became equal partners in the Portland claim; and,

8th. That on 1st March, 1850, the claim of Stark to one-half was adjusted by Lownsdale setting apart a certain portion of the claim to Stark, and on the 13th April, 1850, Coffin and Chapman ratified that adjustment.

Now, here, March, 1850, we have Stark, Lownsdale, Chapman, and Coffin, the claimants, recognized by the acts of each other.

Congress passed no law in any wise affecting title to lands in the Territory of Oregon, until September, 1850; and, therefore, where a controversy arose, in July, 1850, relating to titles to land, neither party could be said to have a legal title. Consequently, the amount in controversy could not be ascertained, so as to bring the case within the jurisdiction of this court; and there is no question arising under the Constitution or laws of the United States so as to give jurisdiction.—*Lownsdale v. Parrish*, 21 How. 290.

Secretary Ewing decided, on the 8th March, 1850, that Congress had made no provision, (at that time,) for the sale or other disposition of lands in Oregon.

It will be observed that all these proceedings are had *prior* to the Donation Act of 27th September, 1850.

The 14th section of the Act of 14th August, 1848, (No. 154,) annuls all laws which had been passed by the provisional government as affecting or encumbering the title to the public lands; and then comes the Donation Act of 27th September, 1850, (No. 181,) which justifies us in recognizing *settlements* within its purview, "whether under the late provisional government, or since;" and so all such settlements, disencumbered from the color of right under grants by acts of the provisional government, are to be dealt with as the said Donation Act of 1850, and its supplements order.

The settlements and acts of the several parties antecedent to this Act of 1850, bind and control their interests respectively, as regards the question of limits.

At that time the wife of a claimant had no right; her right, according to the *status* of her husband's claim, as agreed upon by him, and his associate claimants, attached upon the passage of said Act of 1850, and no act of hers subsequently could control the location or extent of the several parcels, which had been agreed upon as the *locus* of each by the parties respectively; and so, following up the matter, we find—

9th. That on the 10th March, 1852, Chapman, Coffin, and Lownsdale enter into an agreement, which was designated as an *escrow*, but which is not, in fact, an instrument of that nature, being merely an agreement, with conditions and penalty. Its object is declared in the outset, to wit: "Whereas it has become necessary in order to a compliance with the law of Congress of September 27, 1850, creating the office of Surveyor General of the public land in Oregon, and to provide for the survey, and to make donations to settlers of the said public lands, that the said parties shall designate, before the Surveyor General of Oregon, the precise portion or part of said Portland tract, which each, by agreement with the other, respectively claims, in order that he may obtain a patent therefor from the Government of the United States," &c. Accordingly—

10th. On the 11th March, 1852, Lownsdale, No. 88, and Chapman, No. 89, filed their notifications with the Surveyor General, with Diagram E, exhibiting the division of their interest in the Portland claim. Coffin did not *then* file his notification, because his portion was *south* of the base line, in township 1 south, range 1, east, not then surveyed; but he filed it, No. 719, on the 19th August, 1852.

The division among them was agreed upon fully, by them, and must stand, according to the Surveyor General's Report of 24th June, 1853, which we affirm, and, consequently, we reject Lownsdale's claim, under his amended notification, filed on 8th April, 1852, covered by the Portland city entry, and the location of Stark, Chapman and Coffin.

11th. We have thus determined to recognize the division and *locus* for—

First. Lownsdale, according to notification No. 88, dated 11th March, 1852, for which no certificate has yet issued on account of his protest against the Surveyor General's decision of 1853.

Second. For Chapman, notification No. 89, for whom, and in consideration of his payment, under Act of 14th February, 1853, (No. 218,) certificate No. 68 has been issued by Surveyor-General.

Third. For Coffin, notification No. 719, for whom, under said act of 1850, and in consideration of a payment under said Act of 1853, the Surveyor General has issued his certificate, No. 67. And,

Fourth. For Stark, notification No. 328, to whom Surveyor General has issued his certificate, No. 69, under his decision of 24th June, 1853, on proof of settlement, and continuous residence for four years.

12th. We decide against the M'Namee claim, for reasons referred to under 6th head, affirming the Surveyor General's decision, to this effect, of 24th June, 1853.

13th. Samuel Speer, notification No. 7989, filed in 1854, "*for a tract of land which he thinks may be vacant.*" The description given in the *unsigned* notification, carries it over the entries made by the city. This may be an error in the description, in using *east* for *west*, in the second course named, for he disclaims interference with the city claim, and describes his claim as lying west of the city reservation of three hundred and twenty acres.

If this claim lies *east* of his first mentioned line, it falls upon the city entries; if *west*, upon other claims. The lands he "*thinks may be vacant,*" are not so.

The Register and Receiver decided against the claim, and we, regarding it as destitute of merit, affirm that decision.

The present claim of M'Namee not being recognized, by reason of his having been more properly a lot holder, than a rural donation claimant, and also in consideration of his subsequent abandonment of the Portland donation claim, and the claim of Speer being rejected as destitute of merit, the premises in question, so far as donation claim, under the Act of 27th September 1850, is concerned, is narrowed down to the claims of Stark, Lowndale, Chapman and Coffin, according to their several locations, as determined pursuant to their own acts, by the Surveyor General.

14th. The matter next requiring consideration, is the right of the "*Portland City,*" which interferes with the locations aforesaid, of Stark, Lowndale, Chapman, and Coffin, under the Act of 23d May, 1844, "*for the relief of the citizens of towns upon the lands of the United States under certain circumstances.*"

The testimony shows that the town or city of Portland was laid out in 1845. The aforesaid Act of 23d May, 1844, (No. 79,) contemplates "*relief of the citizens of towns of the United States.*" That law is as general and comprehensive as language can well make it. The town of Portland is recognized as in existence in 1845; and as the 14th section of the Act of 14th August, 1848, (No. 154,) establishing "*the Territorial government of Oregon,*" declared the laws of "*the United States extended over,*" and "*in force in said Territory, so far as the same or any provision thereof may be applicable;*" and as there was the town of Portland then existing, (1845,) and the Town-site law necessarily was applicable, it is difficult to resist the correctness of the decision of my predecessor, of the 17th April, 1854, as affirmed by the Secretary of the Interior, that the said Act of 1844 did apply and was extended to Oregon by the aforesaid Act of 1848. The subsequent Act of 17th July, 1854, in express terms extending and enlarging said act, may be regarded as affirming the decision, for it is quite clear that upon well settled general principles, a town-site would not be liable to rural donation or pre-emptions, even in the absence of statute law to that effect.

By the aforesaid action, however, of my predecessor, as affirmed by the late Secretary of the Interior, the question is *res adjudicata*.

Pursuant to this decision, the "*corporate authorities*" of the incorporated city of Portland, on the 1st February, 1858, entered certain tracts containing three hundred and six, eighty-one hundredths acres, in a compact form. Receipt No. 19, of the Receiver at Oregon City.

This entry, subject to revision in regard to conforming with the lines of the public surveys, and correct area, interferes with the locations of the donation claims of Stark, Lowndale, Chapman, and Coffin; yet, so far, and

in all things affecting the rights, as lotholders, of those parties, or either of them, or of their vendees, reaching back to the inception of town title, and including all *bona fide* lotholders, it affirms their titles in directing that the entry shall be "in trust, for the several use and benefit of the occupants thereof according to their respective interests."

So that, in carrying into effect the decision of 1854, in regard to the town site of Portland under the Act of 1844, we recognize and patent the premises for the benefit of all lawful *bona fide* lotholders, and propose an express reservation in the patent certificate, and patent yet to be issued for it, of any valid claims which may exist in virtue of the several donations of Stark, Lowndale, Chapman, and Coffin, and so, in the issuing of patents to them, we propose they shall bear even date, and simultaneous delivery, and contemplate a like saving clause in regard to the town site entry, and accordingly render this as our decision in this respect in regard to all of them.

Very respectfully, your obedient servant,

THOS. A. HENDRICKS, Commissioner.

Register and Receiver,

Oregon City, Oregon Territory.

No. 496.

*The mere act of town authorities in including land within the incorporated limits of a town, there being no town improvements thereon, will not exclude the same from Pre-emption.**

DEPARTMENT OF THE INTERIOR,
November 5, 1858.

The papers submitted to this Department by your letter of the 18th of August last, in the case involving the claim by pre-emption of John G. Hays, to a certain tract of land in the South Platte District, Nebraska Territory, contested by certain parties claiming to be lotholders in the town of Plattsmouth, are herewith returned.

The act of the Nebraska Legislature, incorporating the City of Plattsmouth, enacts, that all the territory included within the geographical limits of said city, together with all additions that may be made thereto, is declared to be a city, &c. The geographical limits of Plattsmouth can only be considered as embracing the land entered or subject to entry under the Act of 1844; and the act of the town authorities in making additions thereto of adjacent public lands, by simply surveying the same into streets, &c., and platting it, will not be recognized or allowed. Your conclusion, therefore, that the mere act of including the land within the limits of the incorporation of the town, would not exclude it from pre-emption, there being no town improvements thereon, is just and correct. From a consideration of the facts of the case, I am satisfied that your decision in favor of the right of said Hays, is in accordance with law, and the same is hereby affirmed.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

* This decision explained in case of *Omaha v. Harback*, October 8, 1859. (No. 500.)

No. 497.

Lands occupied as part of a town, are not subject to Pre-emption under the Act of 1841.

DEPARTMENT OF THE INTERIOR,
November 5, 1858.

Your letter of the 27th of September last, and the accompanying papers pertaining to the pre-emption claim of Miles C. Seldon to a certain tract of land embraced within the corporate limits of Nebraska City, have been considered.

Said tract appears to have been "designated upon the plat of said city," and made a part thereof by the act of incorporation, and to have been *occupied and settled* upon, as a *part of the town*. While these facts would establish no claim or right on the part of the town authorities thereto, they would be sufficient, in view of the words employed in the act of incorporation, to exclude it from agricultural pre-emption under the clause of the Act of 1841, which provides that "no sections or fractions of sections included within the limits of any incorporated town shall be liable to entry under the provisions" of said act; *provided*, the plat of the city had been actually made and completed, prior to the passage of said act of incorporation.

But the improvements of said Seldon were not of such a character as would entitle him to pre-empt the land he claims. Your decision, adverse to his right, is accordingly hereby affirmed, and the papers are herewith returned.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 498.

Lands adjoining a town, which may be occupied for Town purposes, are but out-lots of said town, and not subject to entry by a new name.

DEPARTMENT OF THE INTERIOR,
April 13, 1859.

I have examined and considered the case of pre-emption, received with your letter of 24th January last, wherein the Clay City Company, James Minchell, David Beebe, and others, are claimants, to enter a certain tract of land, subject to sale at Nebraska City, and the papers are now returned.

The separate rights of those claimants who signed the petition for the incorporation of Clay City, became thereby merged in the city claim. By that act, each of the signers admitted, by clear implication, that his object was not to acquire the land for his "own exclusive use and benefit." The town site claim, under the Act of 23d May, 1844, is invalid. First, Because the so-called "Clay City" is not a city or town. At most, even if the land was built upon, and occupied for town purposes, the fractions of sections which it embraced, would be but out-lots of the adjoining town. Second, The improvements are not of such a character as to indicate actual town occupancy; and the town claimants, with one or two exceptions, do not inhabit the so-called town. Your rejection of the claim of said town proprietors is hereby approved.

The said parties, Minchell and Beebe, have likewise entirely failed to establish any valid right of pre-emption to the land in controversy, under their original settlement and filing. The proof does not show that their inhabitancy and improvement of the lands claimed by them, was such as

the law contemplates, and requires. It is therefore decided, that the claims of the parties, as set up and presented in this case, must be rejected.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 499.

Town trustees, under the laws of Wisconsin, are qualified to act as the "corporate authorities," specified in the Act of Congress of May 23, 1844. (No. 79.)

DEPARTMENT OF THE INTERIOR,
September 8, 1859.

Sir :—Having considered the question presented by the appeal from your decision, sustaining the rejection by the Register and Receiver, of the application of the county judge of Douglas county, Wisconsin, to enter the land within the claimed limits of Superior City, and recognizing the Board of Trustees, organized under the General Corporation Act of the Legislature of Wisconsin, as the proper parties to accept and perform the trust specified in the Act of Congress of 23d May, 1844, "For the relief of the citizens of towns," &c., I herewith return the case for appropriate action, in accordance with the views hereinafter set forth.

Before the judge of the county court can be recognized as the proper functionary to enter the land in trust, &c., it must appear that the town is not incorporated.

An act of the Legislature of Wisconsin, entitled "An Act to incorporate the City of Superior," was approved April 17, 1858, but the inhabitants of said place having neglected to observe its provisions, the same is, for all practical purposes contemplated by the Act of Congress, entirely nugatory.

Subsequently there was passed, however, by the Legislature of Wisconsin, to wit, on the 17th May, 1858, an act, the first section of which is as follows:—"Section 1. Whenever any of the public lands of the United States, within the limits of this State, have been, or hereafter shall be, settled upon, occupied, and claimed, as a town or village site, it shall be lawful for the inhabitants, occupants, and claimants thereof, or a majority of them, to meet at such time and place as they may agree upon; and when so met, to organize themselves into a body corporate, by choosing a chairman and a clerk, and agreeing upon a corporate name and articles of association, by the terms of which the rights of the *bona fide* claimants of such lands shall be protected, and by choosing three trustees of such corporation; such articles of association shall define the duty of such trustees, and shall also determine the tenure of its officers, and the time and manner of holding further elections of such corporation."

Another law of said State, (see Revised Statutes of Wisconsin, p. 175,) contains the following provisions:—"Section 1. Each organized town shall be a body corporate, and as such, may sue and be sued, and may appoint all necessary agents and attorneys in that behalf; and shall have power to purchase and hold real and personal estate, for the public use of the inhabitants thereof, and to convey and dispose of the same; and to make all contracts that may be necessary and convenient for the exercise of its corporate powers, and any orders for the sale or disposal of its corporate property, which the inhabitants thereof may deem expedient." * * *

"Section 5. All actions, acts, or proceedings, by or against a town, in

its corporate capacity, shall be in the name of such town; but every conveyance of land, within the limits of such town, made in any manner, for the use or benefit of its inhabitants, shall have the same effect as if made to the town by name; any civil action which could be prosecuted by or against an individual, before a justice of the peace, may be prosecuted by or against a town, before such justice."

By virtue of the authority vested in them by the State laws, the inhabitants of Superior City met and organized themselves "into a body corporate."

The act of Congress above referred to, provides that the execution of the trust "as to the disposal of the lots in such town, and the proceeds of the sales thereof," shall be conducted under such rules and regulations as may be prescribed by the legislative authority of the State, &c. The question now arises: First. Has the admitted action of the inhabitants of Superior City, under the laws of Wisconsin, had the legal effect of incorporating the same, and Second. Are the trustees chosen by virtue of the provisions of the law, qualified to act as the "corporate authorities" specified in the Act of Congress of May 23, 1844.

Both of these questions I unhesitatingly answer in the affirmative, and your instructions to the Register and Receiver at Superior City, directing them to permit the entry by the said trustees of said town, and in trust for the several use and benefit of the occupants thereof, are hereby approved.

Very respectfully,

J. THOMPSON, Secretary.

Joseph S. Wilson, Esq.,

Acting Commissioner of the General Land Office.

No. 500.

Apprehensions of violence will not excuse non-filing of notice by a Pre-emptor.

Lands included by specific description, within the limits of an incorporated town, are exempt from Pre-emption, and can only be sold at public sale. Notice must be filed before the inception of an adverse right, and before the conditions of the land are changed.

DEPARTMENT OF THE INTERIOR,
October 5, 1859.

Sir:—The case involving the pre-emption claim of John A. Harback, which was the subject of your reports of 2d July and 9th September last, has been revised and considered.

Harback filed his declaratory statement on the 24th September, 1857, in which he claims to have settled upon the land on the 30th September, 1856. Evidence has been produced to show the existence of a claim club in that part of the country, the members of which threatened violence to those who should assert adverse claims to lands which had been appropriated by themselves. This fact is adduced to excuse the non-filing by the pre-emption claimant within the time fixed by law. I cannot admit the soundness or legal force of this proposition. A settler who permits three months to elapse without filing a notice of claim, loses all right which might have enured to him by virtue of his settlement. It is absolutely indispensable and essential to the existence of a pre-emption right, that this provision of the law be observed strictly and without fail. In cases, however, where no adverse claim has attached to the land, and where the

character of the same is unchanged, a settler may acquire again an inceptive right thereto, dating from the time of filing his declaratory statement. In this case, the land embraced in Harback's claim was included, by an act of the territorial legislature, within the limits of an incorporated town by specific description, and it thereby became excluded from pre-emption by the very terms of the law. There were no vague and indefinite limits fixed in the act of incorporation, as in the charter of Plattsmouth, by which it was attempted to incorporate in advance all additions that might be made thereto; but the legal subdivisions which embrace the tract claimed by Harback, are definitely described. Omaha was incorporated on the 2d February, 1857, after the forfeiture by Harback of his original right, and before he had given notice of his intention to assert a pre-emption claim to the land, as required by law.

For these reasons, as well as for those stated in your report of the 2d July last, which I consider valid, the claim of Harback is rejected.

The land in question is not subject to pre-emption, neither has any right on the part of the authorities of Omaha City, or of any others, attached to the same. It can only be disposed of, or brought into market, by being offered at public sale.

The papers are now returned.

Very respectfully,

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

V. CONFLICTS BETWEEN PRE-EMPTION CLAIMS AND STATE SELECTIONS, FOR RAILROADS, INTERNAL IMPROVEMENT PURPOSES, AND OF SWAMP LANDS.

No. 501.

Claim of entry, by location of a land warrant of the State of Louisiana, on lands reserved from entry, by reason of their belonging to the contested grant of Maison Rouge.

Claim of Pre-emption in the same lands, by entry, for the purpose of Pre-emption. Case of Faust and Rust.

ATTORNEY-GENERAL'S OFFICE,
July 23, 1856.

Sir:—Your communication of the 12th ultimo, presents questions of conflicting claims to a certain tract of land in the State of Louisiana, namely, that of James M. Faust, under an alleged authorized selection of the land by that State, and that of C. H. Dobbs, administrator of Frederick Taylor, under an alleged right of pre-emption in said Taylor.

The land in dispute, is part of that claimed by the representatives of the Marquis de Maison Rouge, and which, after much protracted litigation, was, by a series of decisions of the Supreme Court, at length, during the term of 1854 and 1855, finally adjudged to belong to the United States. (*United States v. King and others*, 3 Howard, 773; 7 Howard, 833; *United States v. Turner's Heirs*, 11 How. 663; *United States v. Cox and others*, 17 How. 41.) The pendency of that controversy gave rise to sundry acts of special legislation, according to the relation of which, to provisions of general legislation, the present matter is to be determined.

1. The claim of James M. Faust.

He holds, if at all, under an internal improvement warrant of the State of Louisiana, and on a selection or location made in the name of that State, by virtue of the eighth section of the Act of 4th September, 1841, entitled "An Act to appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights," by which certain States, including Louisiana, were empowered to take a quantity of public lands for internal improvements, the location to be made by each State, "on any public land, (within such State,) except such as is, or may be, reserved from sale by any law of Congress, or proclamation of the President." 5 Stats. at Large, p. 455, (No. 48.)

And the only point of inquiry is, whether the selection was, or not, made in disregard of any such reservation. If it were, it can have no legal validity.

The Act of March 3, 1811, making general provision for the sale of lands in Louisiana, contains the following proviso:—

"*Provided however*, That till after the decision of Congress thereon, no tract of land shall be offered for sale, the claim to which has been in due time, and according to law, presented to the recorder of land titles, in the District of Louisiana, and filed in his office, for the purpose of being investigated by the commissioners appointed for ascertaining the rights of persons claiming lands in the Territory of Louisiana." 2 Stats. at Large, p. 665.

The Act of May 26, 1824, for settling land claims in Missouri and Arkansas, enacted "That in each and every case, in which any claim, tried under the provisions of this act, shall be finally decided against the claimant; and in each and every case, in which any claim, cognizable under the terms of this act, shall be barred by the provisions contained therein, the land specified in such claim shall forthwith be held and taken as a part of the public lands of the United States, subject to the same disposition as any other public land in the same district." 4 Stats. at Large, § 7, p. 54. The provisions of this act were temporary only; and were continued in force by another temporary Act, that of May 24, 1828, (4 Stats. at Large, p. 298,) and were, by the Act of June 17, 1844, (No. 89,) revived for a certain period of time, and made applicable to Louisiana, Arkansas, and certain portions of Mississippi and Alabama. 5 Stats. at Large, p. 676.

These acts attached, in fact, to the land comprehended within the limits of the claim of the Marquis de Maison Rouge. In some of the documents before me, doubt or uncertainty is expressed on this point, that is, whether the claim of Maison Rouge was among the claims duly before the proper commissioners, as required by the tenor of the Act of 1811; but of this, the proofs will be found in the archives of the Land Office. (See *United States v. King*, 3 How. 773, 780.) Of course, under the acts cited, the land in controversy was reserved from sale, the reservation to terminate forthwith, upon the title being fixed by adjudication, or limitation of action in the United States.

But the tenor of the reservation was materially modified by the Act of January 27, 1851, (No. 184,) which was enacted with particular reference to the Act of June 17, 1844, and which gave a special right of pre-emption, in the lands claimed by Maison Rouge, to all persons holding by purchase in good faith, under him, and who should have improved and cultivated the land so purchased. In order to enable such persons to present their claims, the act provided, that twelve months subsequent to public notice should be allowed them, during which period the lands in question "shall not be liable to sale to other persons, as public lands." 9 Stats. at Large, p. 565.

Now it appears that Faust made entry, in the first instance, under a

location of the year 1845, which was premature, according to the law as it then existed, and again under a new location of September 4, 1853, which was also premature, for no notice whatever, under the Act of 1851, was given by the Land Office, until August, 1854, and even that notice proved to be unseasonable, and had to be countermanded, as against law and void, in consequence of the pendency of the case of the *United States v. Coxe*, which covered three quarters of the pretended grant to Maison Rouge, and was not finally decided until the 5th March, 1855, (17 How. 41.) The Act of 1851, (No. 184,) which continues the reservation of this tract until three months after notice, expressly provides that such notice shall be issued only "in the event of a final adjudication by the court, in favor of the United States." Of course, not until after the rendition of judgment in the case of the *United States v. Coxe*, could any lawful notice be given to declare in conformity with statute, that the lands in question were to be thereupon considered as released from reservation, and from pretensions of alleged grant, and so restored to the mass of the public domain of the United States.

It is clear, therefore, that the claim of Faust cannot be maintained.

2. The claim of C. H. Dobbs, administrator of Frederick Taylor.

In the report of the pre-emption clerk of the Land Office, in that of the Commissioner, in the brief of the case prepared in your Department, and in the arguments of counsel, sundry questions are discussed as appertaining to the claim of Taylor.

I propose to deal with but one of these, which seems to me decisive of the case, without going into others, which may, or may not, be of equal relevancy, but which it will be time enough to consider when they come up insulated, in questions essential to the determination of the rights of the Government.

The material facts it appears are these :

Taylor occupied the land in 1832, and from that time until 1846, when he assigned for a valuable consideration to Mr. Rust, and then removed to another tract of land, which he occupied until his death, in 1848. On his death, his widow administered ; but she marrying again, and removing into another State, was for these reasons, as it is alleged, superseded, Dobbs being appointed in her place. Whether Taylor left heirs is not stated. The object of the administration, however, is frankly avowed by Mr. Rust. It is to provide the means of making effectual, if it can lawfully be done, the assignment to him by Taylor. For Mr. Rust entered upon, and has continued in, the actual use and improvement of the land, though not himself residing upon it, his domicile being in the State of Arkansas.

Here, undoubtedly, are equities of a certain kind in Taylor, and in his assignee, Rust. I am not prepared to say, that by no means whatever could such equities, in a case otherwise free from difficulty, be converted into a legal estate. Nor, in the present case, does evidence appear of anything objectionable in what is aimed at, except in the various prohibitory provisions of acts of Congress. I say nothing upon this point, therefore, except, in behalf of all innocent holders in such circumstances, to exclude conclusions that they are without redress at the hands either of the courts of law or of the United States.

Leaving all these considerations aside, the radical difficulty here seems to me to consist in the fact that, during the whole period of the assumed pre-emptor's occupation, the land in dispute was a part of the statute reservation covering the claim of Maison Rouge. That reservation, we have already seen, commenced with the Act of March 3, 1811, and only expired with the statute of January 27, 1851. During all that period of

time, the land was not open to entry or sale, and of course not subject to pre-emption.

The only reasonable ground of doubt on that point is found in the Act of March 3, 1853, (No. 222,) which enacts:—

“That the pre-emption laws of the United States, as they now exist, be and are hereby extended over the alternate reserved sections of public lands along the lines of all the railroads in the United States, wherever public lands have been or may be granted by acts of Congress.

“*Provided further,* That any settler who has settled on lands heretofore reserved on account of claims under French, Spanish, or other grants which have been or shall be hereafter declared by the Supreme Court of the United States to be invalid, shall be entitled to all the rights of pre-emption granted by this and the Act of the 4th September, eighteen hundred and forty-one, entitled “An Act to appropriate the proceeds of public lands to grant pre-emption rights,” after the lands shall have been released from reservation, in the same manner as if no reservation existed.” 10 Stats. at Large, p. 244.

The proviso of this statute gives to settlers within the limits of the claim of Maison Rouge: 1st, All the rights of pre-emption granted to any settler on the public domain by the general Act of September 4, 1841; and 2d, All other rights of pre-emption, if any, granted by this act.

What are those other rights? Clearly those described in the body of the statute, which extends the *pre-emption laws* of the United States, *as they now exist*, to reservations heretofore made for the Government, in granting lands for railroads to States or others; and which pre-emption laws, as they now exist, if there be any other than the Act of 1841, are in addition to that extended to the lands of the claims of Maison Rouge.

The phraseology of the proviso, it is clear upon any construction of it, is illogical and inexact. The body of the statute applies the Act of 1841 to the subject-matter; because that indubitably is one of the existing pre-emption laws of the United States. The words “granted by this act,” carried the Act of 1841 to this land. It no more needed to specify the Act of 1841 in the proviso than in the body of the new statute.

But let that pass. The real question is of the legal intendment of the phrase, “The pre-emption laws of the United States as they now exist.”

I apprehend that the object of the proviso was to provide for persons then actually settled as pre-emptors on the lands of the grant to Maison Rouge, in addition to tenants holding by purchase in good faith under Maison Rouge. Concede, nevertheless, for the argument's sake, that the occupation, in virtue of which the pre-emptor claims, may date back to some anterior time. The question is, to what time? Or rather to what act to be referred, if any other than that of 1841.

It is contended, in behalf of Taylor, or of Mr. Rust, seeking to have an assumed inchoate or equitable title perfected through Taylor, that the temporary and expired pre-emption Act of June 19, 1834, is thus revived and made applicable to these lands, equally with that of September 4, 1841, and it is under the Act of 1834, and that only, that Taylor's administrative claims the right of pre-emption.

To this it might be replied, that any pre-emption accruing under that act must have been proved in the lifetime of the act, and if not so proved, is utterly and forever lost. 4 Stats. at Large, p. 678.

It might also be objected that, if the temporary Act of 1834 is revived and applied, so, also, are those of February 5, 1813, April 12, 1814, April 29, 1816, May 29, 1830, July 4, 1832, March 2, 1833, June 22, 1838,

and June 1, 1840, which construction would involve the legal possibility, if not the probability, of insoluble conflict of pre-emptor's claims.

These are secondary considerations, however, which might contribute to guide us to a correct construction of the Act of 1853, if the language of that act were equivocal, or of doubtful legal intendment. I am not able to perceive that it is so. It seems to me that the words, "The pre-emption laws of the United States, as they now exist," have but one possible signification. *Now* is the date of the enactment. It will cover, perhaps, all subsequent general provisions of law *in pari materia*, passed during the lifetime of the act in which it is found, such as the supplemental Act of March 2, 1855, and the pre-emption law of June 26, 1856, hereafter spoken of. But by no rule of construction whatever, can it go back to revive and re-enact expired statutes, and enable things to be done to-day which could otherwise be done lawfully only in the previous lifetime, and in virtue of such expired acts. Of course it cannot restore to vitality the Act of 1834, nor enable the representatives of Taylor to assert, under it, pre-emption rights which were created by it alone, which expired with it, and which are not capable of being asserted in virtue of permanent and subsisting acts of Congress.

Nothing to the contrary of this can be inferred from the use of the word "laws," in the plural number. *Law* does not necessarily imply a single statute, nor *laws* a plurality of statutes. Such an expression is sometimes employed as the precise equivalent of statute or statutes, and sometimes even in the plural number, it signifies provisions of statute, though contained in a single statute.

Besides which, the suggestion as to the force of the word "laws," assumes what is not true, namely, that in order to find some pre-emption law in addition to the Act of 1841, we need to look up expired statutes. That is not the only general statute on the subject of pre-emptions, which exists independently of the Act of 1853.

Thus, for instance, we have, besides the Act of 1841, the Act of May 26, 1824, the Act of March 3, 1843, the Act of May 23, 1844, and the Act of August 3, 1846, all which acts existed at the time of the passage of the Act of 1851, and were made applicable by it, to the lands of the grant of Maison Rouge.

Nor, as it appears to me, is any useful inference deducible from the words of the Act of 1853, "shall be entitled to all the rights of pre-emption granted after the land shall have been released from reservation, *in the same manner as if no reservation existed.*" We must give some significance, it is said, to these words. Granted; but it has ample meaning, without recurrence to the Act of 1834; for the very supposition of the Act of 1853 is, that persons may have been, at the time of its enactment, on the land, for the purpose of pre-emption, notwithstanding the unlawfulness of such settlement, by reason of the land being in the state of reservation; and proceeding on that supposition, it proceeds to legalize, conditionally, such settlements, and to give to them rights of pre-emption, in the same manner as if no reservation existed, provided that all the rights of pre-emption so conceded, shall be such only as might otherwise be lawfully asserted, under subsisting acts of Congress.

There is a recent statute, that of June 26, 1856, (No. 294,) which revives and continues in force certain pre-existing statutes, in relation to suspended pre-emption land claims. These acts apply only to entries or sales suspended on account of error, or informality arising from ignorance, accident, or mistake, and where the law has been substantially complied with, but not to cases where there can be no lawful entry or sale, in consequence of the

total absence of lawful authority. In the former alternative, and in that only, such suspended entries may be allowed by the Commissioner of the General Land Office, with approval of the Secretary of the Interior, and the Attorney-General. 9 Stats. at Large, p. 51.

On the whole, therefore, my opinion is, that, as the land in dispute was not subject to pre-emption at the time the alleged pre-emption rights were acquired, and the same not having been legalized by any subsequent statute, the claim, whatever may be its equities, is not sustained by law, and that, for aught that appears in the papers before me, the land still appertains to the public domain of the United States.

I am, &c.,

C. CUSHING.

Hon. Robert M'Clelland,
Secretary of the Interior.

DECISIONS.

No. 502.

The question of right of Pre-emption at double the minimum on reserved alternate sections of the Illinois Railroad, settled.

DEPARTMENT OF THE INTERIOR,
August 28, 1857.

Your letter of the 3d instant, and its enclosures, calling my attention to the decision of my predecessor, and the policy of the General Land Office, recognizing the right of pre-emption, at the double minimum price, in the United States reserved sections along the line of the Illinois Central Railroad, have been received. I have to inform you, in reply, that the question raised by you must be regarded as fully and finally settled, and no appeal from the decision of my predecessor thereon can be entertained by this Department.

J. THOMPSON, Secretary.

J. C. Walker.

No. 503.

The right of the State having attached to part of an alternate section, prior to the Pre-emption settlement, the entry of the Pre-emptor cancelled.

GENERAL LAND OFFICE,
January 12, 1859.

Gentlemen :—In the pre-emption case, No. 455, of 2d October, 1856, in the name of Charles W. Tosh, he claims the north half, southwest quarter, section 31, township 92 north, range 45, west, and the east half, southeast quarter, section 36, township 92 north, range 46, west; and the proof shows that his settlement was made on the 12th September, 1856. These tracts are within the six-mile limits of the Dubuque and Pacific Railroad, within which limits the right of the State attached to the granted, that is, the *odd* numbered sections, on the 8th of July, 1856, from and after which date, the reserved, that is, the *even* numbered sections, were increased in price, to \$2 50 per acre, to legal pre-emptors; the entry is therefore cancelled. You will note cancellation on your books and plats.

If the dwelling of Mr. Tosh be on that portion of his claim which is in section 36, township 92 north, range 46, west, and he desires to retain that part, he may be permitted to do so, upon his furnishing satisfactory proof, and paying a sum in addition to what he has paid, (that is, \$547 50 additional,) to make \$2 50 per acre for the portion retained.

In case he does so, the Register will issue a new certificate of the same number and date as the *original*, for the part retained; and the Receiver will issue a supplemental receipt for the additional payment, giving it a half number of the current series. You will note the transaction on your books, plats, and current monthly abstract, and enclose the new certificate and supplemental receipt in a special letter, referring therein to the date of this.

In case the dwelling of Tosh be not on the part in section 36, or he does not desire to retain the land on the above conditions, you will notify him to make the usual application through your office for the return of the purchase-money.

Respectfully yours,

(Signed) THOS. A. HENDRICKS, Commissioner.

Register and Receiver, Sioux City, Iowa.

Affirmed by Secretary Thompson, April 11, 1859.

No. 504.

Where a party had a valid Pre-emption claim to land, at the time of the location of a State Warrant, the location was void.

A claimant of Pre-emption rights, who has taken the required oath, is entitled to the benefit of the presumption that the same is true, until the contrary is clearly proven.

Acts in relation to British, French and Spanish grants, considered.

DEPARTMENT OF THE INTERIOR,
March 31, 1859.

With your report of the 20th July last, was submitted the appeal of Wiley J. Vester, from your decision of the 12th September, 1857, rejecting his claim of pre-emption to lots, 2, 3 and 6, the southeast quarter of the northwest quarter and the southwest quarter of section 1, township 22 north, range 6, east, under the 5th section of the Act of Congress of 3rd March, 1851, the Act of 2nd March, 1855, and 3rd March, 1853, De Bastrop lands, Monroe District, Louisiana. On the 25th August, by letter of this Department, a reinvestigation was ordered; and on the 27th October last, I declined to dismiss the appeal, or to order an arrest of proceedings, under the reinvestigation.

Your report of the 15th ultimo, has submitted the results of the reinvestigation, with the separate letter of the present Register and Receiver, under date of the 25th January, 1859, concurring in the opinion, that Vester substantially complied with the laws under which he claims, and ought to be allowed to enter the land, if it is yet under the jurisdiction of the Land Department. On the first hearing of the case, in September, 1856, the local officers were divided in opinion, and submitted the case to you for instructions, and it is argued by the contesting claimant, that the last judgment of the local officers on the recent reinvestigation, is but the expression of preconceived opinions; I therefore assent to a more elaborate review of the case, than would otherwise be proper. Briefly then as to facts. It is reported, that on the 20th September, 1855, the plat of the public surveys

of the land in contest, was filed in the local office, the surveys in the field having been made in the first quarter of 1855. On the 20th October, 1855, Vester filed his declaratory statement, and on the 16th May, 1856, Mrs. Dorcas Dinkgrave, applied to locate, or did locate, a Louisiana State internal improvement warrant on the same lands. On the 16th September, 1856, the contestants appeared at the local office, and tendered the original proof. On the 26th November, the local officers rendered adverse opinions, the Register in favor of Mrs. Dinkgrave, and the Receiver in favor of Vester. On the 12th of September, 1857, your opinion sustaining the Register, was forwarded to Monroe, and on the 17th May, 1858, you submitted the internal improvement selection, in list 50 A., reporting that no objection to approval appeared on your books. The selection was approved May 24, "subject to any valid legal rights that may exist, to any of the tracts," embraced in the list. On the 7th July following, an appeal was filed in your office, from the decision, rejecting Vester's pre-emption claim, and on the 16th July, this appeal being inadvertently overlooked, the list was forwarded from your office to Governor Wickliffe, with the advice that my approval had been made subject to any valid legal rights which may have existed at the time the selection was made known to the Register of the local land office. The appeal of Vester was reported from your office, July 20th, and my order for a reinvestigation, given August 25th, and a deed from Governor Wickliffe to John T. Ludeling, assignee of Dinkgrave, was issued August, 30, 1858, without reference to any saving or exception in the body of the deed, of prior valid legal rights to the same land.

The first point argued in support of the right of Ludeling is, that these proceedings have concluded this Department from any further action in the matter of Vester's application to enter by pre-emption. To this I cannot agree. The 8th section of the Act of September 4, 1841, gives to the States named in the first section of that Act, and others that should thereafter be admitted into the Union, a certain quantity of land, to be located within their limits respectively, in parcels of not less than three hundred and twenty acres, upon "any *public* land, except such as is, or may be reserved from sale by any law of Congress, or proclamation of the President, which said locations may be made at any time after the lands of the United States, in said States respectively, shall have been surveyed," &c.

The mere reading of this section suggests the proposition, that if Vester had a valid pre-emption claim to the land in controversy, at the time of the location of the State warrant, the location was void; the land not being of that *public* description to which the State is by law confined, in making locations. At the time the location of Dinkgrave was made, it is now clearly shown that Vester was living on the land, with extensive and valuable improvements, having some eight or ten field hands at work, raising fifty to one hundred bales of cotton annually, and corn in proportion; the cultivation extending to all the fractions claimed, and embracing, at one time, about one hundred and seventy acres of the land. The declaratory statement of Vester was also on file in the district office, thus giving notice to the State, in the field and in the office, that a private claim had been set up to the lands, and hence, that they were not subject to selection as public lands of the United States, if such private claim was valid. The Act of 1841 (No. 48,) has not prescribed any formal approval by the Secretary of the Interior, of the internal improvement selections which may be made by the several States, and the act of approval is only an office form, proper to observe before marking the selections on the official plats of the public lands, but not precluding an investigation of prior valid legal rights to any of the tracts selected. The contestant, Mr. Ludeling, refers to the Act of August

3, 1854, (No. 249,) as carrying the fee of these lands to the State, on the receipt by the Governor, of the lists containing them ; but the limiting clauses of that act, restrain it from embracing and strengthening a title to internal improvement selections, if such selections fall upon lands to which there was, at the date of the selection, a prior valid legal right. As regards the claim of Vester, the proof shows that he went upon the lands before the passage of the Act of 1851, and continued to live there until his death, in August, 1858, and with his negroes, stock, and farming implements, occupied and cultivated the land from year to year, and from time to time enlarged his cultivation. The local officers report a substantial compliance with the pre-emption laws on his part, and in that conclusion I shall concur, unless it appears that they have erred. Not deeming it necessary to review the many points of objection to their conclusion, I shall notice only those that appear to be of a grave character, viz. : First, That Vester was not, in fact, the party entitled to pre-emption of the lands at the time of his application, because he was not the owner of the improvements at that time, but had forfeited his pre-emption right by the execution of a deed of certain negroes, stock, &c., "together with the place and farming utensils, * * the property of him, said Wiley J. Vester," dated April 23, 1855. The Department will not allow an entry when the party applying is manifestly proceeding in bad faith, or is endeavoring to obtain the land for another ; but when he comes forward and takes the usual oath that he has "settled upon and improved the land in good faith, to appropriate it to his own exclusive use and benefit, and that he has not made any agreement or contract, in any way or manner, by which the title he might acquire would enure to the benefit of any person except himself," he is entitled to the benefit of the presumption that his affidavit is true, till the contrary is shown. It is not enough merely to produce testimony which gives rise to a doubt. In this case, I think the proof sustains most strongly the proposition that Wiley Vester was the owner, and was acting in good faith at the time of his application. It is true, that in 1855, he made a deed of sale to his brother, and had the slaves, stock, &c., taxed in his brother's name, but it is clearly shown that he continued to exercise ownership over the property, and control the avails of the crops from the land all the time, and was regarded by the neighbors as really the owner. The brother, Solomon Vester, was offered at the first trial as a witness, to prove that he was not the owner, and had paid no consideration for the property, but his testimony was then refused, and before the second hearing, he had deceased. On the second hearing, a probable motive for the execution of the deed is shown, and although thus disreputable conduct is developed, I think it appears, from the testimony, either that the deed was regarded by the parties at all times as a sham, or, if it had ever been recognized as valid, it had been abandoned by both before the oath was taken by W. J. Vester. The local officers do not appear to have made any objection to the claim on this account, on reporting the result of the last investigation ; and I do not find sufficient reason to dissent from their conclusion.

As to the second point of objection stated, that Vester did not appear in due time, to offer proof and payment for the land, it is to be remarked that the Receiver at the first hearing, held that the period of one year, named in the law of 1851, does not commence to run against a claimant under that act, till the filing of the plat in the local office, and the Register at that time, who rejected the application for other reasons, and whose opinion you confirmed, did not state this as an objection. If such was in fact the recognized doctrine of the local office, I should not wish to disturb it, and the claimant being entitled to have his rights considered as of the first day

he appeared to make proof, viz., the 16th of September, 1856, would appear to be within the year. But beyond this, I think that the Act of 3d March, 1853, enlarges the privileges conferred by the Act of 1851, on settlers within the limits of the rejected De Bastrop Grant. The last proviso of the Act of 1853, is in these words, "That any settler who has settled or who may hereafter settle on lands heretofore reserved on account of claims under French, Spanish or other grants which have been or shall hereafter be declared by the Supreme Court of the United States to be invalid, shall be entitled to all the rights of pre-emption granted by this act, and the Act of 4th September, 1841, &c., &c., in the same manner as if no reservation existed." The meaning of this would be very clear were it not for the concluding words, "in the same manner as if no reservation existed." I think the most natural construction of them, is in the meaning of mere explanation and amplification of the preceding beneficial provisions of the law, and not as restrictive. I understand them to mean, that the settler, after a reservation is vacated, shall have the benefit of "this act, and the Act of 4th September, 1841," in as ample a manner as is consistent with other laws. In this view, I observe, then, that when the Act of 1853 was passed, the particular tracts involved in this controversy were as fully and completely unsurveyed public lands, as on the 24th May, 1856, they were surveyed public lands; and when, in the first quarter of 1855, they were surveyed, Vester was settled upon and cultivating them. The right conferred by the Act of 1853, on a settler who had settled and was then residing on the De Bastrop lands, was, to say the least, after survey in the field, as ample as he could have claimed under the Act of 1841.

That the Act of 1853 should be regarded as applicable to the De Bastrop lands, is shown by the language of the Act of March 2, 1853, declaring it plainly to be so. Vester was a settler, and cultivated on the 3d March, 1853, and on the 2d March, 1855, and at these dates the land was unoffered public land. I am therefore of the opinion, that these laws conferred on him a preference-right to enter the lands at any time before they were offered at public sale, and this right could not be defeated by the intervening location of a State internal improvement warrant.

The series of laws referred to, are specially favorable to settlers on the De Bastrop lands. First, the Act of 1851, then the Act of 1853, enlarging their privileges further, and then that of 1855, giving therein a still further and very unusual privilege of entering, under certain circumstances, a quantity greater than one hundred and sixty acres. In harmony with these liberal provisions, the second section of the Act of 29th June, 1854, protected from prejudice, by the location of certain claims thereby conferred, such tracts of land as were in the actual possession of settlers.

From all these acts it is evident, that Congress intended the amplest protection to actual settlers, in their preference-right to enter their lands thus possessed and cultivated; and a faithful construction of the law secures to W. J. Vester the preference-right to enter all the lands claimed in his declaratory statement, which right, by reason of his death pending the controversy, has devolved upon his heirs.

Herewith I return the papers in the case.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 505.

The Department will not determine conflicting claims arising under applications to locate State Warrants.

The owner of three hundred and twenty acres of land cannot acquire a Pre-emption right under the Act of 3d March, 1853, giving settlers on British, French and Spanish grants a preference right of entry.

DEPARTMENT OF THE INTERIOR,
May 11, 1859.

Sir:—In the matter of contest between James M. Faust and Albert Rust, respecting a certain tract of land lying within the limits of the "Maison Rouge Grant" in the Monroe District, Louisiana, claimed by the former under the Acts of 4th September, 1841, (No. 48,) and 3d March, 1853, (No. 222,) and by the latter in virtue of his application to locate Louisiana internal improvement scrip thereon; having duly considered the facts of the case, the papers are herewith returned.

The rights of the parties arising under different applications to locate Louisiana internal improvement warrants, upon the land in controversy, are not cognizable by this Department, and no jurisdiction will be exercised over them. Where land, subject to State selection under the Act of 1841, is selected, the same may be approved in favor of the State without deciding any question as to the interest of the locator or State agent. All questions of title, arising under location of State warrants, are necessarily and properly determinable by the State authorities.

Unless the prior valid rights of Faust had attached to the land in question, it is not controverted that the same was and is subject to selection by the State under the Act of 1841.

With regard to the claim of Faust to a pre-emption right to this land, it appears that he settled in 1843, and has since continuously resided thereon. That after the passage of the Act of March 3, 1853, to wit, in September of that year, he applied and was permitted to locate Louisiana internal improvement warrant, No. 716, on the same. That this location was, in 1856, rejected by the Commissioner of the General Land Office, upon the ground that the land was not subject thereto. That before such rejection, to wit, in January 1855, said Faust filed his declaratory statement in the land office at Monroe, Louisiana, embracing the land he now claims under the Acts of 1841 and 1853.

It has already been decided in another case, that the law requires no declaratory statement of claimants under the Act of 1853, and the fact of Faust's filing such notice, is only material as showing the date of the commencement of his claim under the pre-emption law, he having previously claimed under a scrip location. The contest and appeal in the case, rendered a tender of payment for the land on the part of Faust, unimportant. Again, in June, 1856, it appears that said claimant made and subscribed the affidavit required by the 13th section of the Act of 1841, before the Receiver at Monroe. Now the question is, was said Faust at this date, capable of acquiring a right of pre-emption, or was he disqualified by reason of his ownership of three hundred and twenty acres of land.

In the case of Shirley against Deiffendorf, which was returned to your office on the 14th ultimo, I decided that "the intention of the pre-emption law was manifestly to restrict the benefits conferred by it to those who owned less than that quantity of land, (*i. e.*, three hundred and twenty acres,) and no right of pre-emption could be acquired by one who was the proprietor of a greater quantity than that specified," and further, that "if it should appear that the former settler had merely temporarily divested

himself of title to the excess for the purpose of evasion, and to relieve himself of his disability of pre-emption, intending to resume the proprietorship thereof, after being allowed to pre-empt government land, such a transaction would be regarded as fraudulent, and his claim should be rejected."

As respects claimants under the Act of 1853, I concur in opinion with you, that we must look to the Act of 1841 for a "further description of the persons entitled, than that given by the Act of 1853," and that persons excluded by the one are not provided for by the other.

What then were the facts with regard to the ownership by Faust of a greater quantity of land than the law allows a pre-emption claimant to hold, at the time he made his affidavit in June, 1856. It appears from the tract books in your office, that on the 7th December, 1854, Louisiana internal improvement warrant, No. 91, was located by said Faust on a tract of land embracing three hundred and twenty-three, fourteen hundredths acres. There is among the papers on file a copy of a deed from James M. Faust to his son, Marion M. Faust, of date 29th of September, 1856, conveying a tract comprising three hundred and seven, thirty-one hundredths acres, one subdivision of which was located with said warrant, No. 91, by said James M. Faust.

There is also on file a certificate of the Recorder of Ouchita Parish, Louisiana, which sets forth that J. M. Faust on the 31st December, 1858, mortgaged to J. F. Pargaud certain lands, being three hundred and fifty-nine, sixteen hundredths acres, embracing in part the land located by said Faust on the 7th December, 1854.

It appears that portions of the lands specified in said deed and mortgage, were selected by the State of Louisiana as swamp lands. The date at which Faust acquired title to said swamp land is not known.

In my letter to you of 31st March last, in relation to the claim of W. Vester, I remarked that a party "is entitled to the benefit of the presumption that his affidavit is true, till the contrary is shown." I am unwilling to find so grave a fact as that a claimant has sworn falsely, unless upon the clearest and most satisfactory proof.

I have therefore to direct that this case be remanded to the local office, with instructions to the Register and Receiver to appoint a time and place, giving due notice thereof to the parties concerned, for taking and hearing further proof as to the ownership by said Faust of more than three hundred and twenty acres of land at the date of his affidavit, to wit, 3d June, 1856.

If, at that date, it shall appear that said Faust was the proprietor of a greater quantity of land than three hundred and twenty acres, his claim to the right of pre-emption must be disallowed.

Very respectfully,

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 506.

The Act of 2d March, 1849, (No. 166,) granting Swamp Lands to Louisiana, does not require the issuance of a patent therefor.

Where prior valid rights existed, a patent may issue thereon, notwithstanding the land had been approved to the State.

DEPARTMENT OF THE INTERIOR,
September 28, 1859.

Sir:—Your report of the 10th instant, relative to the pre-emption claim of John H. Rainbolt, sets forth that "Rainbolt settled on the land about

the 10th day of January, 1848, and proved up and received his certificate on the 10th day of February thereafter. The certificate was, however, erroneously issued for the southwest quarter, (instead of the southeast quarter,) of the section, and the sale so reported in the Register's abstract." This tract, *i. e.*, the southeast quarter section 3, township 4 north, range 6, east, was afterwards embraced in a list of swamp selections, and patented to the State. In view of these facts, you inquire, whether a patent could issue to the pre-emption claimant, while the patent to the State is outstanding?

The Act of March 2, 1849, under which this tract was selected, provides for the approval of the lists of selected lands, "so far as they are not claimed or held by individuals," and that "on that approval, the fee simple to said lands shall vest in the said State of Louisiana." No patent is requisite to pass the title to the State, and none has issued in this case. The land in question was held by an individual, and it appears that his prior legal right has been established thereto. The approval of this tract to the State, would therefore have been against law and void, even had it not been expressly excluded from such approval by the language employed, by which lands to which prior valid legal rights had attached, were excepted.

A patent may therefore issue to the pre-emptor, after the governor shall have been notified of the error committed, in including said land in the swamp list.

Very respectfully,
J. THOMPSON, Secretary.

Jos. S. Wilson,
Acting Commissioner of the General Land Office.

No. 507.

United States lands cannot be selected as a portion of the grant, by the eighth section of the Act of 1841, to a State, for internal improvements, until after the land is surveyed.

A pre-emptor, who is entitled to the entry of one hundred and sixty acres, under the Act of Congress of 3d March, 1853, as a settler before survey, has a right superior to that of a Claimant under the State, though the latter may have claimed and cultivated a portion of the tract adversely, at the date of survey.

When the Register and Receiver, at a land office, have issued a public notice to settlers, relative to filing declaratory statements, under the Act of 1853, such notice being necessary, in order to the proper execution of the land laws by those officers, will be regarded as having been issued by the proper authority, and should be respected by the officers of the United States, when dealing with the parties to whom the public notice was addressed.

DEPARTMENT OF THE INTERIOR,
Washington, December 9, 1859.

Sir:—The case submitted with your report of the 5th October last, wherein an appeal has been taken from your decision of the 19th April, 1859, in favor of the right of Christian J. Megerle, to enter by pre-emption, the northwest quarter of section 21, township 4 north, of range 8, east, in Stockton District, California, appears to be one of importance, as involving principles, which are applicable to many other cases in the same district. It has been ably argued, and I have given it a careful consideration, and I now proceed to state my conclusions, sustaining the decision of your office.

The pre-emptor settled in 1853, and when the land was surveyed, in May and June, 1855, he was residing upon, and cultivating a part of this quarter. He was the only settler on it then, but his cultivation was confined to the quarter upon which his house had been built. The parties who cultivated other parts of the quarter-section, are not before us as claimants, under the pre-emption laws, and have had no residence on it at any time, but they claim title under a location of California internal improvement scrip upon this tract, with other lands, effected at the Marysville Office, on the 14th May, 1856. The contest therefore, is one between the pre-emptor and the State of California.

The land granted to California, by the eighth section of the Act of September 4, 1841, (No. 48,) must be "located in parcels, conformably to sectional divisions and subdivisions," * * "on any public land, except such as is, or may be reserved from sale by any law of Congress, or proclamation of the President," * * "which said locations may be made at any time after the land shall have been surveyed."

Under these provisions of law the State claims in this case, and it is clear from the mere recital of them, that we cannot recognize a selection made by a State agent in 1854, before the land was surveyed, nor can we admit the selection made after the survey, in May, 1856, if, before and at the time of that selection, Megerle had a valid legal right to the land, under the pre-emption laws.

The pre-emption Acts of 1853 and 1854, give rights of pre-emption to certain settlers on unsurveyed lands. Megerle is a claimant under the Act of 3d March, 1853. He settled in due time. He was upon the land when it was surveyed, in May and June, 1855, and on the 2d October, following, he filed a declaratory statement in the land office at Benicia, properly describing this quarter-section; but that filing was irregular, as this township had been transferred before the date of that filing into a new district, that of Marysville, under the order of the President, as published in notice of the General Land Office, No. 534, dated April 9, 1855. In February, 1856, a notice was published by the land officers at Marysville, in the Marysville Eagle, (and afterwards by them charged to the United States, as appears from your official files,) which includes the township in which the lands in contest is situated, notifying settlers in the townships therein described, that it was necessary for them to file their declaratory statements for pre-emption rights, on or before the 15th day of May, 1856, in the Register's Office at Marysville. Megerle, it appears, filed his statement with the Register at Marysville, on the 16th April, 1856, covering the same land on which he had previously filed in the Benicia office.

In 1858, the township in which this land lies, was transferred from the Marysville district to form a constituent portion of the new district of Stockton, under the authority of the Act of 29th March, 1858, and in this case, in October, 1858, the officers at Stockton have decided that the notice issued by the Marysville officers, in February, 1856, whilst the land was in the Marysville district, was unauthorized and void; and that the true date of the filing of the official plat of this township, in the office at Marysville, was the 5th December, 1855, and that consequently, the pre-emptor, Megerle, having failed to file on or before the 5th March, 1856, has forfeited his pre-emption.

I cannot recognize that position to be correct. By issuing the notice of February 15, 1856, and accepting declaratory statements conformably thereto, the officers at Marysville, whilst the land was in their district, virtually decided that the plats of the townships described in that notice were filed in their office on the 15th February, 1856, and this decision, the

Stockton officers could not properly reverse in 1858: the effect of such reversal, if admitted, being to defeat pre-emption claims which the Marysville officers had publicly recognized, so far as the question of the date of filing is concerned. In respect to that notice, the officers at Stockton are as much bound by it as though they had issued it themselves; and when we take into consideration the fact that the administration of the pre-emption laws, under your supervision, is one of the peculiar functions of Registers and Receivers of land offices, which such officers in California, in 1855 and 1856, could not execute properly without a resort to the publication of notices like that of 15th February, 1856, it is evident that this notice must be regarded as having been issued by the proper authority, and as embodying that public record of the date of the official filing of the plats of the townships therein described, which the officers of the United States are not at liberty to call in question, when dealing with the persons to whom that notice was issued.

I therefore decide that Megerle was not in default for filing his declaratory statement; and as his settlement was in time, and he was the only settler on the quarter-section in contest at the date of survey, and claims his land in the most compact form, he has the legal right to make the entry claimed.

His right has been bestowed on him by the laws relative to pre-emption in California, and I can neither abridge nor deny it, although it may be true that good neighborhood on the part of Megerle toward Terry and Hodges, would have dictated that he should have claimed less land than he does claim.

The papers in the case are now returned to your office.

J. THOMPSON, Secretary.

To Commissioner of the General Land Office.

VI. PRE-EMPTION TO MAIL CONTRACTORS.*

No. 508.

Circular in relation to Pre-emptions to Contractors carrying mails through Territories west of the Mississippi, under the general provision for that purpose in the Act of Congress, approved 3d March, 1855, making appropriations for the service of the Post Office Department, (Statutes for 1855, p. 684;) also, in reference to the special post route Pre-emption, under Act of 3d March, 1857, (United States Statutes, p. 190.)

GENERAL LAND OFFICE,
September 9, 1857.

GENERAL STATUTE OF MARCH 3, 1855.

Gentlemen:—In the 1st section of the above mentioned act of Congress of the 3d March, 1855, (No. 279,) it is provided that “each contractor engaged or to be engaged, in carrying mails through any of the Territories west of the Mississippi, shall have the privilege of occupying stations, at the rate of not more than one for every twenty miles of the route on which he carries a mail, and shall have a pre-emptive right therein, when the same shall be brought into market, to the extent of six hundred and forty acres, to be taken contiguously, and include his improvement; but no such pre-emptive right shall extend to any pass in a mountain or other defile.”

* See “Suspended Entries,” Title 5.

It is held by this Office—

First.—That to constitute a right of pre-emption under this law, the mail route on which the claim is based must form a part of a system *stretching laterally across the Territory, being a link in or part of a connected route from the line of the State, west of the Mississippi to the Pacific*, and that no benefit or privilege is conferred by the said act on routes stretching lengthwise in a northerly or southerly direction in the Territory, and forming no part of such connected route.

Second.—The party preferring a claim, must furnish a map showing the entire route for which he is a contractor, having clearly indicated thereon each particular section claimed as a “station” under the law, with a sworn certificate, endorsed on the said map, from the nearest postmaster to each of the said “stations,” showing that said stations are between the several intermediate points designated in the contract with the General Post Office Department, and stating that he, the postmaster, *has knowledge* of the fact of such “stations” being on the route, and located as represented on said map, and further showing the position or relation of his office, on the map, to the “station” to which he certifies.

This map must be filed in the district office, and be accompanied by evidence from the Post Office Department, that the party claiming is a “contractor” on the route indicated.

Third.—The mail contractor or claimant, must file, in the proper district office, his written declaration of intention to claim the benefits of the law *within three months* from the selection of his “stations,” if on surveyed lands, giving a full description of each station; and if the lands *be not surveyed* at the time of selection, then such declaration must be filed within three months after the return of the township plat to the district office, that being the period within which, from date of settlement, a claimant is required, by the General Pre-emption Act, to file for unoffered lands.

Fourth.—Proofs, to the satisfaction of the local land officers, must be furnished, showing the extent of the *improvement* at each “station,” and that it is of a character to fully subserve the purpose of the “station.”

The fifth section has been modified, and now stands as follows:—

Fifth.—The mail route may be divided into sections of twenty miles each, and the contractors allowed to pre-empt one station in each of said sections, upon its being shown that each station has been selected in good faith under the law, and not for speculative purposes, and that no two stations are within ten miles of each other. See Secretary's letter of October 30, 1857.

Sixth.—Upon unoffered land the claim must be picked up and paid for during the existence of the contract and before the day fixed by the President for the public sale of the land, otherwise any right which the party may have had will be forfeited.

Where the land is *offered* and “subject to private entry,” proof and payment must be made within twelve months from the date of the commencement of the “improvement.”

Seventh.—Each contractor bringing himself within the law, is entitled to a pre-emption not exceeding six hundred and forty acres, in contiguous tracts, to include his improvements, according to the lines of the public surveys, and not extending to any pass in a mountain or other defile, and, of course, not embracing mineral or other reserved lands.

Eighth.—Notice to adverse claimants to any portion of the land selected as a station must be given in writing, and should be served in time to allow at least a day for every twenty miles the party may have to travel in going to the place of taking testimony.

SPECIAL STATUTE, ACT MARCH 3, 1857. (No. 311.)

By the 10th section of this law, the Postmaster General is authorized "to contract for the conveyance of the entire letter mail, from such point on the Mississippi river as the contractors may select, to San Francisco, in the State of California, for six years," &c.

The 12th section declares, "that the contractors shall have the right of pre-emption to three hundred and twenty acres of any land not then disposed of or reserved, at each point necessary for a station, not to be nearer than ten miles from each other: and provided, that no mineral land shall be thus pre-empted."

The principles laid down in the foregoing, respecting the general law of 1855, will apply, under this special statute of 1857, modified only so far as this, that the right of pre-emption is restricted to three hundred and twenty acres, and the stations cannot be admitted nearer than ten miles from each other.

Respectfully, your obedient servant,

THOS. A. HENDRICKS, Commissioner.

To Register and Receiver at ———.

Approved September 11, 1857. J. Thompson, Secretary of the Interior.

No. 509.

Report giving the Commissioner's construction of the Acts granting rights of Pre-emption to Mail Contractors.

GENERAL LAND OFFICE,
October 29, 1857.

Sir:—The Acts of Congress, of 3d March, 1855, (No. 279,) and of 3d March, 1857, (No. 311,) granting the right of pre-emption to mail contractors in the territories, were evidently passed to provide for the exigencies of the mail service through the uninhabited regions of country. Stations, of which provision may be made for passengers, drivers and horses, are indispensable. The privilege of occupying these stations on the public domain, and of making all necessary improvements, is first given; and then, to make the party safe in his improvements, and to prevent disturbance at his station by any other purchaser, the right is given him of buying the land, to the exclusion of all others. The primary object of the law is, to provide necessary stations and to give security to improvements, and not wholly to compensate the party in land for carrying the mail. By the first Act it is shown to be the judgment of Congress, that the stations need not be nearer together than twenty miles, and by the second Act, that they need not be nearer than ten miles. The language used contemplates the exercise of a discretion on the part of the contractor in going beyond the point of twenty miles, with a view to the selection of an eligible locality, but not in stopping short of that point. The language is not, at the rate of one *for every twenty miles*, but, "at the rate of *not more* than one for every twenty miles." The right is not to pre-empt a section of land upon every section of twenty miles of the route, but to establish stations along the route *not more* frequent than one for every twenty miles, and to enter the sections upon which they are situated. Establishing his first station at or beyond the point of twenty miles, the contractor must then pass, as I think, twenty miles further, before he has the right of station and pre-emption again; for, in the first instance, if he passed several miles beyond the point of twenty miles, he exercised only the discretion given him by the statute. The general Act of 3d March, 1855, and the special law of 3d March, 1857, being upon the

same subject, in pursuance of the same policy, and providing for the same necessities, it is proper to look at the second Act to ascertain the intention of Congress, if it be therein made plain, in case the language used in the first Act is ambiguous, or susceptible of different constructions. Turning then to the Act of 3d March, 1857, giving the right of stations and pre-emption along the mail route from the Mississippi river to San Francisco, we find that the language there used clears the matter of all obscurity, for it is declared that, "the contractors shall have the right of pre-emption to three hundred and twenty acres of any land not then disposed of or reserved, *at each point necessary* for a station, *not to be nearer* than ten miles from each other: and provided, that no mineral land shall be thus pre-empted." This language shows the purpose of Congress to have been, in every respect, as I have stated. The points selected must be necessary for stations—and not *nearer* than ten miles from each other—leaving to the party to consult his interest in establishing his stations at greater distances from each other.

In executing the Act, it is our duty to give it such construction, if the language will allow it, as will not expose its provisions to abuse. If the law be treated as mainly providing a compensation for carrying the mail, and the contractor be allowed to establish stations, and pre-empt stations along the route, *at the rate* of one for every twenty miles, without the restrictions mentioned in our Circular of September 9, 1857, he may exercise his right much to the prejudice of the public interest, by selecting the most desirable lands, in point of locality, timber, quality of soil, water-power, &c., crowding them into that part of the route passing near the settlements, and avoiding selections in the more remote, barren, or otherwise undesirable portions of the country. It cannot be supposed that Congress so intended; but, on the contrary, that it was a leading purpose of the legislature, so to order the mail stations, in point of distance from each other, as to constitute them a nucleus of settlement, the interstitial spaces between which would naturally be filled up in the advance of emigration and settlement all along the extended overland route.

In regard to the case presented by the appellant, Mr. Jacob Hall, it appears along this mail route of eight hundred and fifty miles, from Independence to Santa Fé, he has a few stations which are only sixteen or seventeen miles apart, whilst others are twenty and twenty-six miles from each other. In a great mail enterprise like that in question, and looking to the stations as above alluded to of diminished distances, we would consider it as doing no violence to the General Statute of 1855, nor to our circular, to recognize a claim where the diminished distance falls so nearly within the twenty miles limit, and is found to be less than *one-fourth* of that extent. In the exercise of the legal discretion, imposed by the principle of the common law, which commands us to take no heed of small matters, we would thus take care of *bona fide* interests, and enforce the ends of justice, whilst, if we discard the ruling of the fifth article of the circular, we disable the Executive from restraining a contractor who might choose to take his forty-two stations in as many miles, leaving the residue of his route, of several hundred miles, to be dotted at distant and remote points, with such improvements as profit, convenience, or necessity might suggest, and in disregard of the continuous settlement principle, at points of given distance, which the law seems to contemplate.

Mr. Hall's communication, with enclosures, is herewith returned.

With great respect, your obedient servant,

THOS. A. HENDRICKS,

Hon. J. Thompson, Secretary of the Interior.

Commissioner.

In his reply to the foregoing report, dated the 30th October, 1857, Secretary Thompson expresses his concurrence in the construction which is placed upon said Acts, with the following qualification:—"I am inclined to the opinion that, looking to the evident intent of the statutes, we should be fully justified in dividing the mail route into sections of twenty miles each, and allowing the contractors to pre-empt one station in each of said sections, it being shown, that each station has been selected in good faith, and not for speculative purposes, and that no two stations are within ten miles of each other. A modification is, therefore, suggested in the instructions heretofore issued. Very, &c., J. THOMPSON, Secretary."

Commissioner of the General Land Office.

No. 510.

To constitute a right under the law granting Pre-emptions to mail contractors, the route must form a part of a system stretching laterally across the territory, &c.

GENERAL LAND OFFICE,
March 31, 1858.

Sir:—I have the honor, herewith, to enclose you all the papers in relation to the claim by pre-emption, under the Act of 3d of March, 1855, (No. 279,) making appropriations for the service of the Post Office Department, (Statutes for 1855, p. 684,) of Preston Robert, Jr., and William Stewart, mail contractors on route No. 15030, from Nebraska City, Territory of Nebraska, to Marysville, Kansas, and thence to Leocompton; an appeal having been taken from the decision of this Office, adverse to the rights of pre-emption on said route. The question to be determined is preliminary, and is, whether any right of pre-emption can attach under the act aforesaid to any portions of the public lands on said route. By Circular of the 11th of September last, approved by you, it is declared "that to constitute a right of pre-emption under this law, the mail route, on which the claim is based, must form a part of a system stretching laterally across the territory, being a link in or part of a connected route, from the line of the States west of the Mississippi, to the Pacific." This Office has decided, that the route, No. 15030, is *not* a link in or part of a connected route, from the line of the States west of the Mississippi, to the Pacific. It will be seen, from the diagram herewith enclosed to your Department, in letter of Postmaster-General, of the 27th instant, that the point of departure or eastern terminus of the great route leading to Salt Lake City, and thence to the Pacific, is Independence, Missouri, and the intermediate stations on said route, are Marysville, "Fort Kearney," "Fort Laramie," and "Salt Lake," etc. etc., and this Office holds that the first link in that route is the portion thereof between Independence and Marysville, the point where the two branches of route No. 15030 meet, and that route No. 15030 is merely a feeder of said great route, but not a link in or part thereof. From this decision, the Hon. Andrew Stewart, attorney for the claimants has taken an appeal, and has expressed a desire to have the case submitted to the Attorney General. All of which is respectfully submitted for your consideration and such action thereon as you may direct.

With great respect,

THOS. A. HENDRICKS, Commissioner.

Hon. Jacob Thompson, Secretary of the Interior.

Concurred in by Secretary Thompson, who declined referring the case to the Attorney General, January 26, 1859.

No. 511.

Mail Contractor's Pre-emptions will not attach to lands before extinguishment of Indian title.

DEPARTMENT OF THE INTERIOR,
May 15, 1855.

The subject has heretofore been brought to the notice of the Department by the Postmaster-General, in the case of Jacob Hill, and it was decided that no pre-emption right could attach, under that provision in said law, to any lands to which the Indian title was not extinguished, or to such as may have been ceded to the United States in trust for specified purposes, beneficial to the Indians.

Respectfully, &c.,

R. McCLELLAND, Secretary.

Commissioner of the General Land Office.

Administrators, executors or heirs, are not required to live on the land of a deceased settler, in order to consummate his right. The law only requires the "executor or administrator of the estate of such party, or one of his heirs, to file the necessary papers" to complete the claim.—(Commissioner's letter to Register and Receiver, Leecompton, Kansas Territory, June 28, 1858.)

Conveyances made for lands entered under pre-emption and graduation laws before the issuing of patent, will not be recognized by the Commissioners of the General Land Office.—(Letter to E. H. Ellis, July 26, 1856.)

Moving from his own dwelling in a town or city, does not debar a pre-emptor's right.—(Commissioner's letter to Register and Receiver, Superior, Wisconsin, January 12, 1857.)

Native Citizenship.

The preservation, by our native-born citizens, of family records of births, &c., is not so universal as to justify us in insisting upon the production of such a record as the only admissible evidence of native citizenship. We must, therefore, where it is alleged under oath, that such record does not exist or is not accessible, resort to other and the next best and most readily available testimony; which may be the affidavit of a respectable person, setting forth his knowledge of the claimant, &c.—(Commissioner's letter to Register and Receiver at Chatfield, April 20, 1857.)

Oregon.

The Act of 27th September, 1850, does not prevent donees from pre-empting one hundred and sixty acres, under the Act of 4th September, 1841.—(Commissioner's letter, December 1, 1857.)

By Act of 17th July, 1854, the pre-emption privilege was extended to unsurveyed lands in Oregon.—(Commissioner's letter to Receiver, Oregon City, December 3, 1857.)

Where the husband has settled, and filed a declaratory statement, and disappears mysteriously, having either been killed, or having abandoned his family, the widow may make settlement, filing, &c., *de novo*, and prove up on same tract.—(Commissioner's letter to Register and Receiver, Faribault, Minnesota, September, 26, 1857.)

Affidavit of pre-emptor, if contradicted, the facts will be inquired into, after notice.—(Commissioner's letter to Register and Receiver, Red Wing, Minnesota, July 6, 1855; and to Secretary of the Interior, November 19, 1855.)

Declaratory statement need not be filed in person. The settler must file a written statement signed by himself or his duly authorized attorney. It may be transmitted by mail, or entrusted to an agent, but in either case, at the risk of the settler.—(Commissioner's letter to S. A. Lewis, Nebraska city, October 23, 1857.)

Entries, when made in a district to which the land does not belong, may be confirmed under Act of 26th June, 1856.—(Commissioner's letter to Officers at Stillwater, April 30, 1855, and to Minneapolis, July 13, 1855.)

The fact of persons having heretofore had the benefit of the Act of 4th September, 1841, shall interpose no bar to their obtaining the benefits of the Act of 3d March, 1853, in California. (See proviso, 6th sec., No. 224.)

No. 512.

Mail Contractors are not entitled to Pre-emption on a route not a link or part of a line to the Pacific.

DEPARTMENT OF THE INTERIOR,
October 26, 1858.

I herewith return the papers received with your several letters of 6th February, 23d March, 19th July, and 16th September last, relative to various entries and locations by John B. and William Bennett, along mail route No. 15002, from the Nioway river, in Nebraska Territory, to the Nemaha agency, in Kansas, which said entries and locations were permitted by the Register and Receiver at Omaha, Nebraska Territory, Land Office, under the Act of March 3, 1858. For the reasons stated by you in your letter of 11th January last, to the Hon. F. Ferguson, "that said route, which runs in a northerly and southerly direction, is not a link in or part of a connected route, from the line of the States west of the Mississippi, to the Pacific," I concur in opinion with you, that the Messrs. Bennett are not entitled to the right of pre-emption under said act.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

A pre-emption claimant before entry, has no right to sell timber from the land. The Act of 3d March, 1831, imposes a fine of triple the value of the timber sold by a trespasser, and twelve month's imprisonment.—(Commissioner's letter to A. S. Collins, Algona.)

Pre-emption, by one of the heirs, or by the legal representative of a deceased settler, under 2d section of the Act of 3d March, 1843, (No. 72,) in case the settler dies before the expiration of the time for filing, and the executor or administrator could not qualify before the expiration thereof, would have the same length of time to file as intervened between the settler's death and the expiration of his legal time for filing, had he lived.—(Commissioner's letter to R. S. Stevens, May 3, 1858. Commissioner's letter to J. W. Rogers, May 4, 1859. Commissioner's letter to A. W. Diggs, June 13, 1859.)

Pre-emptions running into two land districts, cannot be allowed. The settler must be restricted to the part containing his residence.—(Commissioner's letter to Register and Receiver, Red Wing, Minnesota, August 22, 1855.)

Where public lands are in controversy, and the testimony has been received at the District Office *prior* to the day of public sale, such lands will not be offered until the cases are determined, and a special order issues directing how they shall be disposed of.—(Commissioner's letter to Register and Receiver, Nebraska city, August 24, 1858, and to Register and Receiver, Omaha, Nebraska Territory, June 13, 1859.)

Head of a Family.

It is held, that if in consequence of separation or desertion by the husband, the wife becomes the head of the family, and the fact be established by testimony satisfactory to the Register and Receiver, no reason exists why she should be debarred the right of pre-emption.—(Commissioner's letter to E. L. Parsons, April 27, 1857.)

In computing the twelve months from date of settlement, both days are allowed the pre-emptor, *e. g.*, if he settled on 1st January, 1855, he may prove up at any time during the day of 1st January, 1856.—(Commissioner's letter to Register and Receiver, Hudson, Wisconsin, May 19, 1855, and to Register and Receiver, Chariton, Iowa, October 4, 1856.)

Held, that where the party claiming the right of pre-emption is prevented by an act of Providence from making proof, &c., in due season, he does not lose his right.—(Commissioner's letter to Register and Receiver, Fort Des Moines, Iowa, December 11, 1856.)

TITLE IV.

Graduation Entries.

CIRCULARS OF INSTRUCTION.

No. 513.

Circular instructions under the Graduation Act of August 4, 1854.

GENERAL LAND OFFICE,
October 30, 1854.

Gentlemen:—In consequence of numerous questions that have arisen under the act entitled “An act to graduate and reduce the price of the public lands to actual settlers and cultivators,” approved August 4, 1854, (No. 251,) it is deemed proper to issue this Circular under said act, superseding entirely that of the 30th August last.

A copy of the act, which took effect from its passage, is hereto appended. It applies to all the public lands of the United States, with the following exceptions, to wit: those reserved to the United States in acts granting lands to States for railroads or other internal improvements, where the existing minimum at the date of said act was more than \$1 25 per acre; mineral lands held at over \$1 25 per acre; lands reserved from sale by act of Congress, order of the President, or which may have been appropriated for any purpose whatever; lands which are required by treaty stipulations to be sold for the benefit of Indians; and those which are required to be disposed of under special legislation of Congress.

The following persons, and *those only*, can enter under the provisions of this act, to wit: 1st, pre-emptors; 2d, persons who were, at the date of the act, actually settled thereon, but who cannot prove a pre-emption, or those desirous of at once becoming actual settlers on and cultivators of the lands; and, 3d, those who want them for the use of an adjoining farm or plantation, owned or occupied by him or herself. Minors, married woman, or others ordinarily or legally incapable of contracting, cannot enter lands under the provisions of the act.

Lands subject to the operation of this law are also subject to pre-emption, at the graduated price, under the provisions of the act of September 4, 1841, (No. 48.) Where settlers claim any of these lands by pre-emption, under that law, they must file, or have filed, their declaratory statements in due time after the settlement, and may prove up their rights, and make payment at the graduated price within the extended period given by the second section of said act, except towards the close of each period of graduation, when they must be paid for within thirty days preceding the next graduation or reduction that shall take place, or forfeit their claim, (unless the year allowed by the Act of 1841 has not expired,) and the land settled on by

Graduation prices in Pre-emption cases.

Where a settlement is made on graduated lands, the settler may have a pre-emption right to the land at the graduation price, until the commencement of the thirty days prior to the time when the land claimed will pass into the next succeeding class. —(Commissioner's letter to Register and Receiver, Menasha, Wisconsin, July 30, 1857.)

them will be subject to private entry. If not purchased at private entry, however, before the next graduation or reduction has taken place, such lands will again be subject to pre-emption as aforesaid at such reduced price. This Act provides, however, that nothing in it "shall be so construed as to interfere with any right which has or may accrue by virtue of any act granting pre-emption to actual settlers upon public lands;" therefore, any right of preference which may have attached, or may hereafter attach, under the Act of March 27, 1854, entitled "An act for the relief of settlers on lands reserved for railroad purposes," for lands outside the six and within the fifteen mile limits, where the minimum of \$1 25 was not increased, may be paid for *at the graduated price* within the time prescribed by the said Act of 1854, except towards the close of each period of graduation, when they must be paid for within thirty days preceding the next graduation or reduction, or the claim be forfeited. All claims to land of the latter character preferred so near the close of any period of graduation as to diminish the time which the parties would otherwise have had for the entry of the same, and which shall not have been consummated or entered prior to the thirty days preceding such reduction of the land to the next lowest grade, are not forfeited, but may be entered within the periods allowed by the said Acts of 1841 and 1854, *but in such cases the usual minimum must be paid*, viz: \$1 25 per acre. All entries, by pre-emption or otherwise, under the provisions of this act, must be in a compact body, by legal subdivisions, of tracts *adjacent* to each other, the same as under the pre-emption act of 1841, except where the land is claimed for the use of an adjoining farm or plantation, when it must adjoin said farm or plantation, and form with it such compact body as aforesaid.

All lands not claimed under the provisions of this act, as pre-emptions, or for settlements existing at the date of the law, or for actual settlement and cultivation, or as a constituent part of a farm or plantation, will be subject to the laws regulating the sale or location of lands at the ordinary minimum price of \$1 25 per acre.

Parties entitled to the provisions of this act, cannot locate warrants or scrip on the land applied for, unless they take acre for acre; that is, a forty-acre warrant or scrip can only take a forty-acre tract, or its equivalent; an eighty-acre warrant can take an eighty-acre, or two contiguous and adjacent forty-acre tracts, forming a compact body of eighty acres: and so on, without reference to the graduated price of the land.

Where persons, capable of contracting, have settled upon and cultivated lands subject to the operations of this act as above explained, and are entitled to pre-emptions, they can enter one hundred and sixty acres under the second section of this act, and an additional quantity adjacent thereto, on making affidavit before the Register or Receiver that they want it for the use of their adjoining farm or plantation, as required by the third section.

Land which was occupied by an actual settler thereon at the *date of the law* is not regarded as liable to entry by another for settlement thereon, or for the use of a farm, as it was evidently the intention of the law to protect persons so situated, and not to place them at the mercy or in the power of those who might desire to settle thereon, or of those who would thereby add the improvements of another to their existing farms. To avoid, therefore, as far as practicable, interferences of this character, a clause to that effect is inserted in the form of affidavits, hereto appended. Such parties, so settled, are entitled to enter at the graduated price, and should do so at the earliest possible period, as this protection does not extend so as to exclude persons who may desire to enter the land at the usual minimum of

\$1 25; nor does such protection in any event extend beyond the legal subdivisions embracing his improvements.

Where persons have not settled upon the public lands, but desire to do so at once, they can enter lands under the provisions of this act, on making affidavit to that effect before the Register or Receiver, and that they intend to enter the land for the purpose of actual settlement and cultivation. They can enter any legal subdivision, from a half section down to a quarter quarter section; but if they enter less than a half section, then subsequent entries can only be of tracts adjacent to and forming as compact a body of land with that previously entered, as possible. The lands applied for by each of the classes of persons, at any one time, should be embraced in one entry, and not a separate entry for each tract. Where parties apply to enter parts of a regular section (not on the north or west of a township) which contains a few acres more than six hundred and forty acres, the requisite *number of legal subdivisions* of such section may be taken as would, under ordinary circumstances, make up the quantity of three hundred and twenty acres—that is, two quarter sections, four half quarters, &c., and without paying for the excess above three hundred and twenty acres at any other than the reduced price; but where lots or fractional tracts are taken, the nearest approximation, only, to said three hundred and twenty acres can be taken, *not to exceed* that quantity.

Where persons desire to enter lands for the use of an adjoining farm or plantation, they can do so, to the extent of three hundred and twenty acres, on making affidavit to that effect, as above directed; but it must be of land contiguous to such farm and forming with it a compact body of land. Where more than one farm is owned by any one person, he or she may enter land adjoining each of said farms, provided the quantity entered does not in the aggregate exceed three hundred and twenty acres.

In cases where two or more persons apply simultaneously to enter the same piece of land, if either has performed such acts as to entitle him to a pre-emption, he will have a preference over the others at the graduated price. If they all apply to enter it under the graduation law, for purposes of settlement and cultivation, or for use of a farm, it will be put up to the highest bidder, subject to the *graduated* minimum.

If either of said applicants is one who desires to enter land at ordinary entry, with money, scrip, warrant, &c., or as agent of a State or company to which a grant has been made, it will be put up to the highest bidder, subject to the *ordinary minimum of one dollar and twenty-five cents* per acre: and where the successful bidder wishes to locate scrip or warrants in part payment for the land, the excess, per acre, for each and every acre, must be paid for in cash; and where the agent for the State or company is such bidder, he will be allowed to locate the same upon paying for the excess in cash, the area of the tract being debited to the grant.

The law requires the affidavit prescribed by the third section to be taken before the *Register* or *Receiver*, and there is no authority in this office to modify this requirement or to authorize any other officer to take it. As no fee is allowed to the Register or Receiver for taking the affidavits, the preparation of them cannot be required of the land officers, nor the expense of furnishing the same imposed on the government. A form therefor is appended to these instructions, and, for the convenience of parties, it is suggested that a printer or other person in your vicinity might have them printed, and reimburse himself by charging parties a small price for the blanks; but you are charged not to have any personal connexion with such undertaking, as parties are to be left free to prepare their own affidavits or to purchase such printed blanks, as they may prefer, so that they follow

the form prescribed. See Act of 17th July, 1854, chapter 84, prescribing immediate removal from office, of any officer who shall charge or receive fees or other rewards not authorized by law.

As the rights given by this act are personal and because of actual settlement and cultivation already made or contemplated, and as assignments of rights acquired under the second section are expressly prohibited by the "restrictions and limitations" therein referred to, assignments of entries under the third section will be wholly disregarded, and the patents in every instance issued to the original purchasers.

Lands which became subject to private entry—

Between July 1, 1840, and July 1, 1845,	will come under 1st class,	at \$1 00 per acre.
" July 1, 1835, " July 1, 1840,	" 2d class,	75 "
" July 1, 1830, " July 1, 1835,	" 3d class,	50 "
" July 1, 1825, " July 1, 1830,	" 4th class,	25 "
And those offered prior to July 1, 1825,	" 5th class,	12½ "

Lands which became subject to private entry between the 1st July, 1845, and the 1st July, 1846, will come within the *first* class on and after the 1st July, 1855. Those between the 1st July, 1840, and the 1st July, 1841, will come within the *second* class at the same time; those between the 1st July, 1835, and the 1st July, 1836, will at the same date come within the *third* class; and so on of all the other classes.

Where parties since the date of the law have proved up and paid for pre-emption claims at the rate of \$1 25 per acre, they will be entitled to have the difference, between the amount paid and that of the tract entered at the graduation price, refunded, upon application through the land officers, as in other cases of repayment; so also in cases of entries under the third section of the act, where parties have been required to pay more than the legally graduated price from want of information at the local land office; but where an entry has been made at ordinary private sale at \$1 25, the party entering cannot subsequently claim the right to avail himself of the benefit of the third section of this act.

Where lands have been temporarily withdrawn from sale for projected railroads, &c., and subsequently restored to market, such withdrawal is not to be regarded as affecting the period said lands have been in market, but they are to be treated as if such withdrawal had not been made.

Great care and attention must be given to prevent errors; and all entries claimed under this act since its passage, must be adjusted as above directed.

The testimony and affidavits of claimants, in all cases, under this act, will be transmitted to this Office with the certificates of entry.

Very respectfully,

Your obedient servant,

JOHN WILSON, Commissioner.

Register and Receiver at —.

FORMS FOR AFFIDAVITS UNDER THE THIRD SECTION OF THE ACT.

For one who was settled at the date of the law, (without a pre-emption right,) and for one desiring land for immediate settlement and cultivation.

I —, of — county, —, having applied to enter the —, under the Act entitled "An act to graduate and reduce the price of the public lands to actual settlers and cultivators," approved 4th August, 1854, do solemnly swear that I enter the same for my own use, for the purpose of actual settlement and cultivation, and that, together with said entry, I have not acquired from the United States, under the provisions of said Act,

more than three hundred and twenty acres, according to the established surveys; and further, that the said land is not now in the occupancy of any actual settler whose settlement thereon existed at the date of said law.

Sworn to and subscribed before me on the ——— day of ———, 18—. Register (or Receiver.)

For one who desires to enter land adjoining a farm or plantation, owned or occupied by such person.

I ———, of ——— county, ———, having applied to enter the ———, under the Act entitled "An act to graduate and reduce the price of the public lands to actual settlers and cultivators," approved 4th August, 1854, do solemnly swear that I enter the same for the use of an adjoining farm owned by me, situated on the ———, and that, together with said entry, I have not acquired from the United States, under the provisions of said act, more than three hundred and twenty acres, according to the established surveys; and further, that the said land is not now in the occupancy of any actual settler whose settlement thereon existed at the date of said law.

Sworn to and subscribed before me on the ——— day of ———, 18—. Register (or Receiver.)

No. 514.

Circular under Act 3d March, 1855, (No. 283,) amendatory of the Graduation Act of 4th August, 1854, (No. 251,) and certain other acts relating thereto.

GENERAL LAND OFFICE,
May 1, 1855.

Gentlemen:—By the act of Congress approved 3d March, 1855, entitled "An act to amend an act approved the 4th of August, 1854, entitled 'An act to graduate and reduce the price of the public lands to actual settlers and cultivators,'" it is directed that "said act shall be so construed, that the affidavits required by the third section of that act may be made before any officer duly authorized by law to administer oaths, according to such forms, and pursuant to such regulations, as may be prescribed by the Secretary of the Interior.

The only object of this law is to afford relief to those residing in the State or Territory in which the land is situated which they desire to enter, who may be prevented by any serious impediment, such as physical infirmity, or other disability, from attending *in person* at the local land office, to make the affidavit which the 3d section of the Act of 4th August, 1854, requires to be made "before the Register and Receiver." *To this class of persons, and none others,* is the relaxation in the said Act of 3d March, 1855, to apply.

These "regulations," then, allow you to receive from such persons their affidavits, when "made before any officer duly authorized by law to administer oaths;" but you will require all others strictly to conform to the requirements of the aforesaid 3d section of the Act of 4th August, 1854.

For persons prevented by causes alluded to from attending at the local land office to make the affidavit exacted by the 3d section aforesaid, the following "forms" are prescribed, and which must be strictly adhered to.

(NOTE.—The following forms designated as Nos. 3 and 4, as those in circular of October 30, 1854, are to be treated as Nos. 1 and 2, in the order in which they are printed.)

FORM NO. 3.

For affidavits under the third section of the act for those desiring land for immediate settlement and cultivation.

I, —, of —, and now residing in the — of — county, State of —, aged — years, (*here insert a full description of the age, sex, and, if a female, whether she is single, married, widow, or head of a family,*) being desirous of entering the — under the act entitled "An act to graduate and reduce the price of the public lands to actual settlers and cultivators," approved 4th August, 1854, do solemnly swear, that I enter the same for my own use, for the purpose of actual settlement and cultivation; that I will remove in person, and with my family, on said land within not *exceeding two months* from the date of the entry of the same; that, together with said entry, I have not acquired from the United States, under the provisions of said act, more than three hundred and twenty acres, according to the returns of surveys, and that said land is not now in the occupancy of any actual settler; and further, that if there shall be an actual settler residing upon said land at the date of my entry of the same, I hereby relinquish all claim to the same.

(The affiant's signature.)

City (or county) of —, }
State of —.

On this — day of —, personally appeared before me, A. B., a justice of the peace within and for the — aforesaid, C. D., to me well known as the person described in, and who has signed the foregoing affidavit, who, having been duly sworn, deposes and says, that the statements contained in said affidavit are correct and true.

E. F., Justice of the Peace.

FORM NO. 4.

For those who wish to enter land adjoining a farm or plantation owned or occupied by the applicant.

I, —, of —, and now residing in the — of — county, State of —, aged — years, (*here insert a full description of the age, sex, and, if a female, whether she is single, married, widow, or head of a family,*) being desirous of entering the — under the act entitled "An act to graduate and reduce the price of the public lands to actual settlers and cultivators," approved 4th August, 1854, do solemnly swear, that I enter the same for the use of an adjoining farm owned by me, situated on the —; of said farm, about — acres are now in cultivation, and there are (*here describe the improvements;*) and, together with the entry now applied for, I have not acquired from the United States, under the provisions of said act, more than three hundred and twenty acres, according to the returns of surveys. I further testify, that said land is not now in the occupancy of any actual settler; and further, that if there shall be an actual settler residing upon said land at the date of my entry of the same, I hereby relinquish all claim to the same.

(The affiant's signature.)

The form of the officer's certificate will be precisely like that prescribed in Form No. 3; and where any of the statements made in either affidavit are known to him personally, he should so state in his certificate. Where he has doubts on any point, he should require satisfactory evidence before certifying, and state the nature of the testimony, and the names of the

witnesses. Wild or unoccupied lands are not regarded as farms or plantations within the meaning of this law.

The official character of the magistrate, or other officer who may administer the oath, and the genuineness of his signature, in each and every case, must be certified, under seal, by the proper officer. The periods and principles of graduation fixed by the "circular instructions" from this office of 30th October, 1854, are confirmed by a clause in the first section of the general appropriation act of 3d March, 1855, and you will, therefore, be guided by them accordingly.

The affidavit in the form prescribed in the foregoing must be accompanied, in every instance, by an *application*, in writing, from the settler, specifying the particular tract or tracts claimed, as required by the Act of 24th February, 1810. (2 United States Statutes at Large, p. 556, chap. xi.)

On the application and affidavit thus made and presented, you will endorse the date when presented, giving to each, and the certificate that may be issued for the entry, the same number.

In view of the numerous allegations of fraud under the Graduation law, great care must be taken by you to see that the proceedings in every case are perfectly fair and regular.

Where, through error or inadvertence, persons have paid more than the proper price for the graduated lands, the Receiver will be directed "to refund the excess out of any money in his hands derived from the sales of public lands," under authority of a proviso in the last general appropriation act; but the Register and Receiver must, in the first instance, report the applications of the parties, which, in all cases, should be done as promptly as possible.

By order of the Secretary of the Interior.

JOHN WILSON, Commissioner.

Register and Receiver at ———.

No. 515.

GENERAL LAND OFFICE,
May 19, 1855.

Gentlemen:—We despatched to you yesterday the circular bearing date the 1st May, 1855, with a view that proper effect shall be given to the provisions of the Act of 3d March, 1855, (No. 283,) amendatory of the Graduation Act of 4th August, 1854.

This Act of 3d March, 1855, is designed to afford relief only to those persons *resident in the State or Territory in which the land they may wish to enter is situated*, who *may be prevented by any serious impediment* from attending in person at the local land office to make the affidavit required by the third section of said Act of 4th August, 1854.

If you have permitted any entries to be made inconsistent with the requirements of the circular above mentioned, you are directed to make an immediate report of the same to this Office; setting forth the particular tract, the date of entry, number of certificate, and all other facts requisite to our full understanding in each case, with your reasons for allowing any such entries, in order that proper action may be had in regard to the same.

Very respectfully,

Your obedient servant,

JOSEPH S. WILSON, Acting Commissioner.

Register and Receiver at ———.

No. 516.

*Circular.*GENERAL LAND OFFICE,
December 14, 1855.

Gentlemen :—1st. In all cases where land is entered for the use of an “adjoining farm,” under the Graduation Act of 4th August, 1854, the affidavit of the purchaser must designate the tract covered by the *original farm*, so that this Office may have on its files evidence establishing the fact.

Where entries have been allowed on affidavits in which the original farm is not described, a supplemental deposition must be produced designating it.

2d. Where the original farm has been transferred, with the adjoining tract, by the first purchaser, and the latter is dead, or not within reach, the supplemental affidavit above mentioned may be received from any competent witness.

3d. Affidavits, according to the prescribed form, in any cases contemplated in the foregoing or otherwise arising under the said Act of 1854, may be taken pursuant to the Act of 3d March, 1855, before any officer in the State of ———, authorized to administer oaths, whose official character must be certified under seal. Patents, in all such cases, however, must issue in the name of the original purchasers.

Very respectfully,

Your obedient servant,

THOS. A. HENDRICKS, Commissioner.

Register and Receiver, Land Office at ———.

No. 517.

*Circular.**GENERAL LAND OFFICE,
January 23, 1856.

Gentlemen :—The sales of public lands for “settlement and cultivation,” under the Act of 4th August, 1854, (No. 251,) “to graduate and reduce the price of the public lands to actual settlers and cultivators,” have been very heavy in most of the land districts, and the certificates of purchase have accumulated on the files of this Office to such an extent as to render it necessary for definite action to be taken, to place such entries as may be valid in a condition for patenting, and cancelling those which may have been made in contravention of the law.

Before patents can be issued for this class of entries, it will be incumbent on the purchasers, in every instance, to produce a *sworn declaration*, with *corroborative testimony*, showing that the “actual settlement and cultivation,” for which purposes the land was entered, have been made, and to this end numerical lists of the certificates of purchase issued at your office for this class of sales will be forwarded to you from time to time, upon the receipt of which you will proceed immediately to notify the purchasers, in each case, to produce the testimony required to perfect their respective entries.

Herewith are printed copies of the *notices* to be given and the form of sworn declaration and corroborative testimony required to be produced. You will take care to keep a proper record of the dates of the notices to

* Superseded by Circular No. 518.

each purchaser, so that at the expiration of the period of limitation, you may be able to report to this Office any failure to comply with the requirement within the period stipulated. In all cases of compliance you will transmit the papers to this Office as speedily as practicable.

The postage on letters written by you to individuals, under instructions of this Office, must be paid, otherwise their transmission is interdicted by the Postal Act of 3d March, 1855.

The Receiver, as disbursing agent, will therefore pay the postage on all such letters, and at the end of the quarter he will transmit a detailed account of the same, certified by the Postmaster and verified by your affidavits, as vouchers to his quarterly disbursing account in which the same may be debited.

Very respectfully,

Your obedient servant,

THOS. A. HENDRICKS, Commissioner.

Register and Receiver at ———.

LAND OFFICE AT ———.
185—.

Sir:—Under instructions from the Commissioner of the General Land Office, you are hereby called upon to produce testimony to perfect your title to the land entered by you on the ——— day ———, 185—, at this Office, per certificate of purchase No. ———, for "actual settlement and cultivation," under the provisions of the Act of Congress entitled "An Act to graduate and reduce the price of the public lands to actual settlers and cultivators," approved August 4, 1854. A form of the required testimony is hereto annexed.

If such testimony be not produced at this Office within two months from this date, it will be regarded as an abandonment of your claim to the land, and the case will be reported to the General Land Office, in order that steps may be taken for throwing the land into market again, after proper notice.

Very respectfully,

Your obedient servants,

———, Register.

———, Receiver.

Sworn declaration and corroborating affidavit, to perfect titles to lands entered for actual settlement and cultivation under the Graduation Act of August 4, 1854.

DECLARATION.

County of ———, State of ———, ss.

On this ——— day of ———, 185—, personally appeared before me, the undersigned ——— for the county and State aforesaid, ———, who, being duly sworn by me according to law, deposes and says, in relation to the land entered by him on the ——— day of ———, 185—, per certificate of purchase No. ———, that the same was for his own use, and for the purpose of actual settlement and cultivation under the provisions of the Act of Congress, of 4th August, 1854, "to graduate and reduce the price of the public lands to actual settlers and cultivators;" that he is at this time in the occupancy of said land, and has been residing thereon since the ——— day of ———, 185—; that [here give a full description of the improvements on the land, stating the number of acres in cultivation] he has made or entered into no contract or agreement, either directly or

indirectly, for the sale or transfer of said land, and that he was twenty-one years of age at the time he entered the same.

Sworn to and subscribed before me, on the day and year first above written.

CORROBORATING AFFIDAVIT.

County of _____, State of _____, ss.

Before me, _____, personally appeared _____, who, being duly sworn according to law, deposes and says, that he is well acquainted with _____, who subscribed the foregoing declaration, and knows him to be the identical person who entered the land described therein, and that he is now, and has been residing on said land since the _____ day of _____, 185—, and that his statement in regard to the improvements on the land he well knows from personal observation to be true.

Sworn to and subscribed before me, this _____ day of _____, 185—.*

No. 518.

Graduation Act of August 4, 1854.

GENERAL LAND OFFICE,
April 7, 1856.

Gentlemen:—To secure the rights of *bona fide* settlers, by obtaining from them the proof necessary to warrant the speedy issue of patents, and thus shield them from the efforts of speculation to set aside such entries, on the ground of alleged non-compliance with the purpose of the law, you were directed by this Office, in the Circular of January 23, 1856, to call upon purchasers, who made entries "for settlement and cultivation," to produce proof of settlement, &c., within two months from the date of notice.

The time for presenting the proof was thus limited to hasten its production, the Office reserving to itself the right to extend the period, at the demand of parties interested, within any reasonable limits.

"As the benefits of the act were designed to be for actual settlers only," as declared by the Attorney-General, in his opinion of the 28th July, 1855, it is proper to fix the time within which proof of the settlement shall be presented, but it is the opinion of the Secretary of the Interior, and the Commissioner of the General Land Office, that it should be fixed upon the most liberal principles, and that the time heretofore allowed is too short, and that one year should be allowed, thus assimilating the period to that prescribed in the Pre-emption Act of 1841, in relation to lands subject to private entry.

Therefore, you are hereby directed—

1st. In all existing entries, for "settlement and cultivation," to allow the parties one year from the first of June next, for the production of the required proof of actual settlement, &c.

2d. In all entries thereafter, (that is, after 1st June,) *one year* from the *date of entry* is hereby allowed for the production of the requisite proof.

3d. Where entries have been made, the purchasers not intending to

* It is not indispensable that the foregoing affidavits should be made before the land officers. Where that cannot be conveniently done, it may be made before any officer authorized to administer oaths, and in that case his official character must be certified under seal.

occupy the land in person, under a misconception of the law, upon filing an affidavit to that effect, you will allow them to hold the land at \$1 25 per acre, requiring them to pay up the difference between that price and the sum already paid under the Graduation Act. For the additional payment, the Receiver must issue a supplemental receipt, giving a *half* number to it, in the regular series. The transaction must be reported in the monthly abstracts of the Register and Receiver, and the Receiver must, of course, charge himself with such additional payments in his quarterly accounts.

4th. In case of the death of a purchaser before perfecting his rights, on proof to the satisfaction of the General Land Office of the *bona fide* intention of the decedent to fulfil the requirements of the law, his claim shall be confirmed to his heirs or legal representatives.

5th. If a "minor" is the "*head of a family*," his entry is valid. If not the head of a family, it is invalid. (Opinion of the Attorney-General, July 25, 1855.)

In the case, however, of a purchaser, whose entry is invalid by reason of his minority at the time, but who afterwards reaches his majority, and has identified himself with the premises by actual settlement and cultivation, the land may be secured to him by producing proof of such actual settlement and cultivation.

6th. Where an entry is made for the use of an "adjoining" farm, it is required that an affidavit shall be filed designating the "original farm," so it may appear that the entry forms, with the said "farm," a compact body of land. This is all the proof required in this class of cases.

7th. Where the validity of entries may be contested, and the sales made void, no preference right will be given to the contestant to enter the land thus vacated, unless it shall appear that he had a right under the law, as an actual settler thereon, at the date of the illegal entry.

Where entries made by speculators in violation of the law, are set aside, the lands covered thereby will be laid open, after proper notice to actual settlers.

Very respectfully, your obedient servant,

THOS. A. HENDRICKS,
Commissioner.

Register and Receiver.

No. 519.

Circular relative to Entries under the Graduation Act of 1854. (No. 251.)

GENERAL LAND OFFICE,
March 21, 1857.

Gentlemen:—Annexed is a copy of the Act of Congress, approved March 3, 1857, "to confirm certain entries of land therein named," being, in fact, a supplement to the Act of 1854.

1st. The effect of this Act of 1857, is to confirm all entries under the Graduation Act of 1854, made *prior* to the Act of March 3, 1857, in which the affidavit has been made in the form, or substance, contemplated by the instructions to the Register, and where the purchase-money has been paid, excepting where "fraudulently or evasively made," or which, on that ground, had "been annulled and vacated."

We are enabled by this enactment to release all entries from the beginning of sales under the Graduation Act to the 3d March, 1857, not falling under the exceptions mentioned, and if there are any impeached cases, not yet transmitted to this office, you will forthwith report them.

2d. This Act of March 3, 1857, however, has no application whatever to any entries made *subsequent* to its passage.

Therefore, in regard to all such subsequent entries, you will inform the purchasers, at the time of making them, that the requirements of the Circular of April 7, 1856, will be insisted upon, and that consequently before patents can issue for such subsequent entries, the proof of actual settlement and cultivation, within a year from the date of entry, must be made as called for by that Circular.

Very respectfully, your obedient servant,

THOS. A. HENDRICKS,
Commissioner.

Register and Receiver at —.

OPINION OF ATTORNEY-GENERAL.

No. 520.

Purchase of Public Lands by Aliens.

Under the Land Laws of the United States, aliens are entitled to purchase the public lands, subject only, as to their tenure, to such limitations as particular States may enact, with this exception, however, that pre-emptions are secured to aliens who have declared their intention to become naturalized according to law, and to citizens whether native born or naturalized, and none others.

The same distinction is maintained in the Graduation Acts, with the further condition, that the limited quantity of land, purchasable by any person at the reduced prices, can be purchased only for personal use, and for actual settlement and cultivation.

ATTORNEY GENERAL'S OFFICE,
July 28, 1855.

Sir:—Your communication of the 26th instant, presents a single question of construction, arising on the Act of August 4, 1854, (No. 251,) entitled, "An act to graduate and reduce the price of the public lands to actual settlers and cultivators." (10 Stats. at Large, p. 574.)

This Act provides, in its first section, that "all the public lands of the United States, which have been in market for ten years or upwards, prior to the time of application to enter the same under the provisions of the act, and still remaining unsold, shall be subject to sale at the price of one dollar per acre," and it proceeds to enact, in the same legislative language, that, after fifteen years, the land shall be subject to sale at seventy-five cents per acre; after twenty years, at fifty cents; after twenty-five years, at twenty-five cents; and after thirty years, at twelve and a-half cents.

The Act provides in the second section, that all claims of pre-emption accruing in virtue of any act granting pre-emption to actual settlers upon public lands, remain untouched by this law, and furthermore gives to the pre-emptor power, within certain periods, of pre-empting the lands described in the act at the reduced prices which it prescribes, but subject in all other respects to "the same terms, conditions, restrictions, and limitations upon which the public lands of the United States are now subject to the right of pre-emption."

Finally, the act, in its third and last section, provides "that any person applying to enter any of the aforesaid lands shall be required to make affidavit, before the Register or Receiver of the proper land office, that he or she

enters the same for his or her own use, and for the purpose of actual settlement and cultivation, or for the use of an adjoining farm or plantation owned or occupied by him or herself, and, together with said entry, he or she has not acquired from the United States, under the provisions of this act, more than three hundred and twenty acres, according to the established surveys."

And the question submitted is, whether *aliens* can enter lands under this act?

I think we shall discover the true answer to this question by closely adhering to the axiom of statutory construction, that all acts *in pari materia* are to be construed together as one law.

If doubt on this point could exist in any case, it cannot in this: for the brevity of the act, and the generality of its provisions, compel us to have recourse, in the execution of it, to other acts, for a multitude of administrative details, without which it would be a dead letter.

In truth, the act presupposes the entire existing land system of the United States in all its completeness of legislation, and of judicial or administrative construction and regulation, and then superadds to the system a specific new fact, namely, sale of certain lands, and in certain quantities, at a reduced price for personal use and for actual settlement and cultivation, either in the first instance, or by annexion to an existing farm or plantation, including, of course, as well pre-emptors as purchasers who are not pre-emptors.

Hence, in administering this act, it becomes necessary for the Commissioner of Public Lands to draw from the body of statutes, and from other legal authorities, such rules as appeared to be requisite, in order to give, in this case, due effect, and no more, to the legislative will of Congress. As the benefits of the act were designed to be for actual settlers only, and to a limited amount, it became necessary to exclude all persons not *sui juris*, such as married women or minors, meaning, of course, married women and minors unemancipated, and constituting subject members of the family of a husband or father; because, otherwise, it would not be personal use, and an actual settler might double or treble his allotment by causing entries to be made by his wife and minor children.

The regulations which the Department adopted in these and other respects, have been sanctioned by Congress. 10 Stats. at Large, p. 649. (No. 277.)

But those regulations do not profess to determine the present question: which, of course, must be decided by consideration of the general tenor and of the particular provisions of the several statutes for the disposal of the public lands, including this one.

Now, the general law, in so far as regards the United States, undoubtedly enables *aliens* to purchase the public lands, subject only, as to their tenure, to such limitation as the particular States may enact.

Originally, an alien, there is no doubt, was also entitled to enter lands by pre-emption. (See Mr. Butler's opinion, of April 18, 1836.)

But the law now in force gives the right of pre-emption only to a person being a citizen of the United States, or having filed his declaration of intention to become a citizen, as required by the naturalization laws. (Act of September 4, 1841, (No. 48,) s. 10; 5 Stat. at Large, p. 458: see Mr. Legaré's opinion, of March 15, 1843.)

Aliens, who have not filed the declaration of intention to become citizens, are now excluded generally from pre-emption, and, of course, from pre-emption under the Graduation Act.

But what is there in the act to forbid the alien to purchase the gradu-

ated lands for cash, without pre-emption, and in open competition with all the world, as he may other public lands? I do not perceive anything.

He is not of the class of persons, who, not being *sui juris* in law, are constructively excluded from the benefits of the act, because incapable to buy for their own use, and to engage to make, or to make actual settlement and cultivation in their own persons. Notwithstanding his alienage, he has, or may have, the personal use and the full competency of a head of family, or a cultivation in his own right.

He has the power, beyond all question, to enter one of the graduated parcels at the ordinary price, even for the purpose of investment or speculation, as it is called, and without limitation of quantity. But in order to obtain a certain quantity at a reduced price, there is a condition that the party should swear to and make actual settlement and cultivation. No other condition is mentioned. It is purchase at the ordinary price without condition, and at the reduced price with condition. No other apparent distinction is made by the statute, none other seems to be implied. In terms and in legal intendment, it applies to all persons competent to buy public lands: provided they are also competent to take for their own use, and to make and execute the engagement of settlement and cultivation.

In my opinion, therefore, save in the matter of pre-emptions, the Graduation Act extends to aliens equally with citizens of the United States.

I have the honor to be, very respectfully,

C. CUSHING.

Hon. Robert M'Clelland, Secretary of the Interior.

DECISIONS.

No. 521.

Proof of settlement and cultivation of lands claimed under the Graduation Law, required.

DEPARTMENT OF THE INTERIOR,
September 18, 1855.

Extract from letter to Commissioner in relation to the Graduation Act:

"The 'actual settlement and cultivation' of the land, were the governing reasons for the grant of the Act of 4th August, 1854, (No. 251,) and the Department should not be called upon to consummate the grant merely because the law allowed the first step towards its consummation to be taken by the party, upon his making oath as to his 'intention' to make such settlement and cultivation. A person may have had such intention at the time of entry, (as in charity it is to be supposed of those who have made the affidavit and subsequently disposed of the entries effected, without any settlement and cultivation,) but that is not regarded as conferring on him a right to the land without that intention being subsequently evinced by acts demonstrative thereof; and it is regarded as perfectly within the power of the Department, and its duty, in order to prevent frauds under the law, to require a performance, within a reasonable time, of that which alone forms the basis of the right designed to be conferred, by engrafting a specified period to the form of affidavit, to give every one thus due notice of what is required of him.

R. M'CLELLAND, Secretary.

Commissioner of the General Land Office.

No. 522.

Where land was selected by the State, and also sold under the Graduation Law, the purchaser selling to another, the latter would have an equitable right to complete the purchase from the United States, if the selection failed in a given case.

DEPARTMENT OF THE INTERIOR,
January 17, 1857.

Sir:—The report from your office of the 12th inst., on the appeal of Bazil G. Puckett, referred to you on the 20th August last, has been received. It appearing that the land in question was selected by the State, many month *before* the erroneous sale thereof was made to John K. Jackson, under the Graduation law of 1854; that such selection was submitted to the Department, and approved, prior to the passage of the Act of 3d March, 1855, leaving nothing to be done but the issue of the patent, to carry the title to the State; that within forty days after the entry, by Jackson, he disposed of his entry and left the State, without furnishing any proof that he had made any settlement or improvement, even of the land, thus raising a strong presumption against his entry by reason of that cause alone, I am of opinion, and so determine in the case, that the only question involved therein really is, whether the land was swamp land or not, and of this you should take the necessary steps to enable you to be fully satisfied. If it was, the selection and approval thereof by this Department would leave nothing necessary to complete the title of the State but the issue of the patent, as if no *subsequent* sale had been made. If it was *not* swamp land, then the equities of the present occupant of the land, Mrs. Lane, should be considered, and an opportunity afforded her to obtain a legal title thereto, in her own name, should it be discovered that nothing had been done by Jackson to consummate his right by making the necessary settlement and cultivation, and thus by this, with the subsequent sale of his entry and departing the State, clearly evincing the illegal character of his entry.

The Department does not regard the deficiency, in the amount paid by Jackson, as of any consequence under the circumstances. That can be remedied by an additional payment in his behalf, if it should be the only obstacle to his right.

Respectfully, your obedient servant,
R. M'CLELLAND, Secretary.

No. 523.

Graduated lands may be entered with Revolutionary Bounty-land Scrip.

DEPARTMENT OF THE INTERIOR,
Washington, June 14, 1858.

Sir:—The entries of Graduated lands at the Springfield, Missouri, Land Office, made in whole or in part with the Revolutionary bounty-land scrip, if otherwise in accordance with law, should be patented in the usual course.

The act of Congress approved the 31st August, 1852, provides that such scrip "shall be received in payment for any lands owned by the United States, subject to sale or private entry." These words are general, and it appears to be practicable and consistent with other laws, to give them the force and meaning which they most obviously bear.

The holders of such scrip, accordingly, would have the right to use the same in payment for public lands subject to sale or private entry, without regard to the price to be paid per acre; unless there be some special inhibition in the case—and I find no inhibition in the Act of August 4, 1854, under which the price of the lands, in the list now before me, was fixed.

With these views the list of entries which accompanied your report of the 8th instant is now returned for the further action of your office.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 524.

Patents to lands entered under the Graduation Law, to be delivered upon the production of the required proof.

DEPARTMENT OF THE INTERIOR,
September 14, 1858.

Your communication of the 11th instant, proposing “to release all entries under the Graduation law, which are suspended solely for the want of proof of ‘actual settlement and cultivation,’ and to patent the same, and to transmit the patents to the proper local officers to be delivered to the respective purchasers, upon the surrender of the duplicate receipts, and the production of the required proof aforesaid” has been considered.

The plan suggested may be adopted, and at the same time you will instruct the Register and Receiver to give public notice to purchasers thereof, advising them that unless their patents are applied for, and the terms of the proposed order complied with within a reasonable time, the same will be returned to the General Land Office.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

TITLE V.

Suspended Entries.

No. 525.

RULES AND REGULATIONS.

[Under the Act of Congress, approved 3d of August, 1846, entitled "An Act providing for the adjustment of all suspended pre-emption land claims in the several States and Territories," the following general equitable rules and regulations are established for the government of the Commissioner of the General Land Office.

The Commissioner will recognize as valid, and place in the first class, suspended entries of the following description :—

1st. All pre-emption entries, in which one or more legal requirements do not appear in the papers, because of the neglect or inattention of the land officers, but where the existing testimony shows a substantial and *bona fide* settlement and improvement of the lands; or where such facts were satisfactorily shown to the local officers, by proof which was lost in transmission to the General Land Office, and cannot now be renewed, by reason of the death of witnesses, or other cause.

2d. All pre-emption entries under the Acts of 12th April, 1814, 29th May, 1830, 5th April, 1832, 19th June, 1834, 22d June, 1838, and 1st of June, 1840, which have been allowed in the names of assignees, instead of the pre-emptors themselves, where the claim is *bona fide*, and the assignees or subsequent purchasers, are in possession.

3d. All entries in virtue of "floats," under the Acts of 29th of May, 1830, and 19th June, 1834, where the *original settlement*, (from which the "float" was derived,) was *bona fide*, and had been actually entered, but where such *original settlement* was on land reserved for private claims, the survey of which had not been returned at the time of entry; and also all entries by such "floats," on land liable to sale, where the "float" entries had been made prior to the return of the official plat of survey for the original settlement.

4th. Entries allowed by pre-emption on "sketch maps," (obtained by the parties,) before the return of the regular approved plat of the township embracing the land.

5th. All entries allowed by pre-emption on land which was reserved at the date of the *Pre-emption Act*, but which was *released* from reservation before the expiration of said act, where such entries are in other respects regular.

6th. Pre-emption entries under laws requiring *actual* residence on public land, in which the residence was found to be on *private* property, but where the tract entered formed a substantial part of the farm of the claimant, and was improved and *cultivated* by him at the period required for residence.

7th. Pre-emption entries of legal subdivisions of a fractional section, which contain more than one hundred and sixty acres, but which are as near that quantity as the existing subdivisions will allow.

8th. Pre-emption entries allowed under one pre-emption law, where it shall have been discovered that said entries are invalid under that act, but where the settlement and improvement is of a character to have entitled the parties to a legal and valid claim, under a subsequent law, provided the land is not embraced by the valid claim of another.

9th. Pre-emption entries in the mineral region, embracing the half of a quarter-section reserved for mineral purposes, where the half-quarter so entered is shown not to have contained mineral; and also entries as "floats," allowed to the claimants, who, by reason of one portion of the quarter-section on which they were settled, containing mineral, were unable to enter more than the half of said quarter-section, provided the claim is otherwise a *bona fide* one.

10th. Pre-emption entries founded upon a *bona fide right* of pre-emption, where, as it respects the mode and manner of the entry, there is not a strict conformity with the law, but where such entry does not embrace a quantity exceeding that allowed by law, is in accordance with the wish of the party or parties interested, and does not interfere with the rights or interests of another.

11th. All private sales of tracts which had not been previously offered at public sale, but where the entry appears to have been permitted by the land officers, under the impression that the land was liable to private entry, and there is no reason to presume fraud, or to believe that the purchase was made otherwise than in good faith.

12th. All sales made at one land office, of lands, which were only liable to sale at another, where the proceedings in all other respects were regular.

13th. All *bona fide* entries on lands which had been only offered, but afterwards temporarily withdrawn from market, and then released from reservation, where such lands are not rightfully claimed by others.

14th. All *bona fide* entries at private sale, allowed at Mineral Point, Wisconsin, and fully paid for, of lands which were not ascertained or reported to contain lead mineral, until *after* the date of said entries, where the land is not rightfully claimed by another.

The foregoing regulations are not to embrace any case where the entry has been cancelled or desired by the party, or where a subsequent entry of the same land has been legally made by the claimant himself, or by another person.

JAMES H. PIPER,
Acting Commissioner of the General Land Office.

We concur in these rules and regulations, October 3, 1846.

R. J. WALKER,
Secretary of the Treasury.
J. Y. MASON,
Attorney-General.

Under the Act of Congress, approved 3d of August, 1846, entitled "An act providing for the adjustment of all suspended pre-emption land claims in the several States and Territories," the following additional rule is established for the government of the Commissioner of the General Land Office:—

15th. Where an entry has been improperly allowed by the District Land Officers, upon evidence deemed by them satisfactory, of the right of the party claiming, and upon the faith of the official certificate of entry issued by the Register, such entry has passed into the hands of a *bona fide* pur-

chaser, a patent shall be issued to such assignee, notwithstanding the subsequent discovery of the improper or irregular allowance to the original claimant, provided the land embraced by such entry is not rightfully claimed by another, and such assignee was, at the time of his purchase, ignorant of the irregular or improper allowance, and in all cases of entries of lands in the Territory of Wisconsin, upon which no lead mines or diggings were known to exist at the time of such entries.

RICHARD M. YOUNG,
Commissioner of the General Land Office.

We concur in the above rule, No. 15, March 13, 1847.

NATHAN CLIFFORD,
Attorney-General.

R. J. WALKER,
Secretary of the Treasury.

Under the Act of Congress, approved 3d of March, 1853, reviving and continuing in force the Act of 3d of August, 1846, entitled "An act providing for the adjustment of all suspended pre-emption land claims in the several States and Territories," the following rule is established for the government of the Commissioner of the General Land Office:—

16th. That all locations under the Act of 14th August, 1848, entitled "An act in relation to military land warrants," be confirmed, and patents issued thereon, where the land located lies in one body, and the only objection to the location is, that it consists, technically, of more than one legal subdivision.

JOHN WILSON, Commissioner.

We concur in this rule, 16th March, 1854.

R. M'CLELLAND,
Secretary of the Interior.

C. CUSHING,
Attorney-General.]

No. 526.

*A Fraudulent Entry cannot be acted upon under the confirmatory Laws.
Alleged Equities will not be regarded in assignees of Pre-emption rights.*

DEPARTMENT OF THE INTERIOR,
Washington, December 27, 1858.

Sir:—Having examined the papers accompanying your report of the 9th ultimo, submitting for confirmation, under the Act of Congress of 3d August, 1846, (No. 110,) and the laws reviving and extending that Act, the pre-emption entry of Jacob L. Huggins, by location No. 878, on the 8th May, 1857, at the Minneapolis office, I am of the opinion, that said entry should be cancelled, or reported for rejection.

It appears that this entry was admitted by the local officers, on an affidavit made by John J. Bramhall, some days previously, before a notary public. Three days after its admission, Thos. H. Skinner made oath before the Receiver, that he, the affiant, "wrote the testimony in the case of Jacob L. Huggins," "and that said testimony has been altered since it was sworn to." The alteration named is manifest on a close inspection of the affidavit, and was evidently made, or procured to be made, corruptly; and on the 11th day of May, the local land officers report, that "a fraud had

been perpetrated, as set forth in the affidavit of Thos. H. Skinner, a very intelligent and credible witness."

In this state of facts, the entry of Huggins appears to be entirely wanting in equitable claim to confirmation; and as the 12th section of the Act of Congress, of the 4th September, 1841, (No. 48,) declares "all assignments and transfers of the right hereby secured, prior to the issuing of the patent, shall be null and void," we cannot regard any parties who come before us, claiming, as purchasers from Huggins, that confirmation shall be made in his name, as a measure to save them from pecuniary loss.

The papers in the case, are now returned to your office for proper action.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 527.

The Commissioner recommends that certain entries by Mail Contractors be allowed, and his recommendation adopted.

GENERAL LAND OFFICE,
April 9, 1859.

Sir:—In answer to the inquiry concerning the early action of this Office, in regard to the execution of the Pre-emption Postal Route Act, 3d March, 1855, (No. 279,) with a view to ascertain whether the mail pre-emption entries, made *prior* to the Circular of September 9, 1857, have been in accordance with any instructions, or any construction of the Postal Route Act, by this Office, I have the honor to state, that after a close examination of the files and correspondence, involving repeated enquiries, as to the import and duties arising under said Act, I can find nothing to countenance such an idea.

As early as the 9th October, 1856, the views of this Office were sought by the Hon. H. M. Rice, and in reply, (27th same month,) he was informed, "that no pre-emption attached to any mail route stretching lengthwise in a northerly or southerly direction in the Territory. That to entitle a party, the route must form a part of a system stretching laterally across the Territory, being a link in, or part of a connected route from the line of the States west of the Mississippi, to the Pacific.

Copies of this letter, at nearly the same date, were sent in reply to similar inquiries. The views thus early entertained of this mail pre-emption law, are the same as are expressed in the Circular of 1857, and are the same which have governed the action of this Office, in all the cases submitted to its consideration, up to date.

I am not able, therefore, to say that the entries that have been allowed, were in consequence of any more liberal construction of the law by this Office towards the contractors, than that expressed in the circular, 9th September, 1857. Yet, it is proper to add, that prior to the issue of that circular, the Registers and Receivers were not instructed on the subject, for the reason that no actual case had arisen, your predecessor having instructed this Office, under date of May 15, 1835, "that the Department prefers that these claims shall come up hereafter, upon their individual merits," and but very few of the contractors were informed by the Office of its construction of the law. And that it may fairly be presumed that the contractors, in making the entries of their stations, and the Registers and Receivers in allowing the entries, did the same in entire confidence that the entries were

authorized by the law ; and, I may add, that without reference to the general purpose of Congress, and the policy of establishing through postal lines, the letter of the statute might readily have received the construction so put upon it by the parties, and the Registers and Receivers. Where the parties, prior to the issue of the circular, established and improved their stations, and complied with their contracts in the transportation of the mails, and made their entries in good faith, they have a strong equity, and ought to be relieved by the government.

I herewith present two cases, designated as A, and B, on the enclosed list, and am of opinion, that these clearly fall within the equitable principle indicated in the foregoing, and accordingly recommend and submit them for confirmation by the board, under the Acts of 1846 and 1856.

THOS. A. HENDRICKS, Commissioner.

Hon. J. Thompson, Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
April 22, 1859.

I concur in the adjudication of the Commissioner of the General Land Office, that the entries described in lists "A" and "B," enclosed, be confirmed, and patents issued thereon.

J. THOMPSON, Secretary.

ATTORNEY-GENERAL'S OFFICE,
May 12, 1859.

I concur in the adjudication of the Commissioner of the General Land Office, that the entries described in lists "A" and "B," enclosed, be confirmed, and patents issued thereon.

J. S. BLACK.

No. 528.

Where lands were entered while they were withdrawn from Market, the entries cannot be confirmed, unless they were shown to be the result of mistake.

DEPARTMENT OF THE INTERIOR,
Washington, May 12, 1859.

Sir:—I have considered your report of the 28th ult., upon the letter of E. D. Campbell, Esq., of La Crosse, Wisconsin, in regard to certain entries and warrant locations, made by him in 1855, for Thomas Spencer and others, of lands which had been selected by the State as part of the 500,000 acres granted for internal improvements, by the Act of Congress of September 4, 1841, and were withdrawn from market pending the selection. The selections, it appears, were rejected, but the entries were made before the land had been restored to market by any public notice.

You may advise Mr. Campbell that the purchase-money or warrants will be restored to the parties interested, on the proper application being made.

Before the confirmation of such claims by the Board of suspended entries, I think it should be made to appear, to our satisfaction, that the allowance of the entries by the local officers, and the effecting of them by the parties concerned, was purely the result of mistake ; for we must regard the withdrawal as an act emanating from an authority which could not be defeated by any action of the local land officers in derogation thereof.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 529.

Precipitancy of entry after Settlement, with other circumstances, indicates fraud.

An entry of unoffered Land is not contemplated until after the expiration of three months.

DEPARTMENT OF THE INTERIOR,
Washington, August 12, 1859.

Sir:—I have transmitted to the Attorney-General the report of the General Land Office of 12th February, 1858, and the abstract No. 5, of the suspended entries, which were therewith submitted.

I have approved the adjudication of the Commissioner, in favor of the entries at all the land offices, as scheduled, excepting those entries that were made at the land offices at Brownsville and Winona, Minnesota. The papers, receipts, and certificates pertaining to the entries at these two offices, are herewith returned; and I suggest, that you cause a re-examination of them to be made. Many of the entries appear to have been allowed, on proof of a single witness, of a settlement commenced only a few days before the entries were made. The improvements mentioned by the witnesses are of a trifling character, and, of course, no declaratory statements are filed. The precipitancy of the entry, after settlement, leaves no time for cultivation or substantial improvement. Other circumstances also indicate fraud. Much of the land thus entered, I infer, has never been offered at public sale, and the apparent result of these short pre-emptions is such as the law forbids, viz., the sale of public land at private entry, before it has been offered at public sale.

I enclose to you a letter addressed to this Department, under date of 27th March, 1858, by E. A. Deslonde, Receiver at Nebraska city, in which, among other things, he says, "I have lately visited the interior of our Territory, and upon townships which are entirely pre-empted, not a single actual settler is found." I refer you also to an editorial in the "Omaha Enterprise," on the subject, which he enclosed.

The allowance of pre-emption, where there has not been a *bona fide* settlement and cultivation, evidently injures the prosperity of new communities, whilst a proper administration of the pre-emption laws promotes their prosperity.

When unoffered land that is surveyed, is claimed by pre-emption, the law requires a declaratory statement to be filed within three months after settlement; and I therefore am of the opinion that an entry of the land is not contemplated, till after the three months expire, unless it is proclaimed to be offered at public sale, before the three months have elapsed. If therefore, on the re-examination of the entries now returned to you, it is found that the settlements were not made three months or more, before the entries, and a public sale has not been proclaimed by which the three months may have been cut short, such cases should be sent back to the local office for report, after notice to the claimants to show the *bona fides* of their settlements, and the equitable grounds on which they rely for a confirmation of their entries.

In the case of entry, No. 2741, at the Brownsville Office, I am of the opinion that the same ought not to be confirmed, but should be cancelled as having been made in violation of law. The letter of the Register and Receiver of the 1st November 1857, admits that this entry was made for the benefit of the Register, the same having been effected through his own office, in violation of the provisions of the 10th section of the Act of Congress of the 10th May, 1800. Although proclaimed by the President to

be offered at public sale, the tract entered, was intentionally withheld by the Register from sale, for his own claim to it, to be carried into a title, and it is entirely clear that he did not pursue the course which the law just referred to requires, where a Register claims by pre-emption, lands within his own district. The next entry at the same office, No. 2742, it was charged, was effected in the same illegal manner, and though the admission of the Register is not so explicit in this case as in the other, I think it cannot be confirmed, unless on notice to the party making the entry and the party for whose benefit there is reason to believe it was made, they, or either of them, are able to show, that the Register had no interest direct, or indirect, in the consummation of the title, or in withholding the land from public sale.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 530.

The Board of Suspended Entries has no jurisdiction in cases of rejected applications. Certain locations by mail contractors to be suspended.

DEPARTMENT OF THE INTERIOR,
Washington, May 26, 1859.

Sir :—Herewith, I return the papers which were submitted, with report of the 2d instant, in the matter of the claims of Frederick Emory to certain lands in Kansas, under provisions of the Act of Congress of 3d March, 1855.

Mr. Emory's application to the Land Office at Ogden, to enter by pre-emption, as a mail contractor on route, No. 15210, section 1, of township 11, of range 6, east, was rejected by the Register on the 17th January, 1859, on the ground that said route did "not constitute part of a connected route from the line of the States west of the Mississippi, to the Pacific." Such had also been the decision of the General Land Office of the 29th December, 1858, but on a change in his views on this point, the Commissioner submitted the same to the Department in a report of the 9th ultimo, and my decision of the 27th, sustained the action of the local officers.

That application therefore, stands rejected, and I am not disposed to reconsider the case; nor do I think that the Board of suspended entries, has jurisdiction, in any case of rejected application, to enter lands.

The report of the Commissioner of the 2d instant, also submitted for confirmation the locations, amounting to one section of land, which Mr. Emory effected at the Land Office at Kickapoo, on the 28th June, 1858. These locations were allowed, so long after the Circular of September, 1857, was issued, that we cannot infer that the claimant and the officers were, at the time, unaware of the contents of that circular. The officers seem rather to have admitted the entry, believing their action to be consistent with the requirements of the circular, but my decision of the 27th ultimo, was to the contrary.

The locations covering six hundred and forty acres in township 9, of range 10, Kickapoo district, do not therefore, appear to have been, in all respects, like the cases of Lowry and Brackett, to which reference was made in my letter of the 27th April last.

After mature reflection, I have concluded to direct that these entries of Mr. Emory, and all other similar ones, remain suspended in your office

till further order, as it is my present purpose to call the attention of Congress in my next annual report to this class of cases, in order to obtain, if possible, the direction of the Legislative power, as to the final action that shall be taken in regard to them.

Very respectfully,

Your obedient servant,

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 531.

Where a Claimant did not move with his family on the land until after his location, but did so before the expiration of one year, and this taken in connection with other facts, it is held that he is entitled to a confirmation.

DEPARTMENT OF THE INTERIOR,
June 29, 1859.

Sir:—The facts presented by the appeal of Green J. Underwood, from your decision adverse to this pre-emption claim to certain land in Monroe, Louisiana District, have been considered, and the papers pertaining to the contest between said claimant and John H. McIntyre submitted by your letter of the 28th of February last, are now returned.

Said Underwood, upon making proof of compliance with the pre-emption law, was permitted to locate a land warrant upon the land in question, on the 2d August, 1856. He claimed to have commenced his settlement on the 14th March, 1856. Upon a reinvestigation of the case, it was found that said claimant did not actually move his family upon the land until after said warrant location.

He did inhabit the same, however, for some months previous to the expiration of the year allowed a settler on offered land to make proof and payment, and although the law does not intend that twelve months shall be allowed in which to make settlement, and to commence inhabitancy, yet the fact that this claimant did actually inhabit the land before the application to locate scrip, in connection with evidence exhibited of his honest intent, creates a strong equity, and attaches a priority of claim on his part which should be protected.

Considering also, that his engagements were of such a character as to render an earlier occupancy of the land with his family incompatible with them, together with the absence of any evidence of intended fraud, I am of the opinion that said Underwood is entitled to an adjudication of his entry or location under the Act of 26th June, 1856.

You will, therefore, be pleased to report the same for confirmation under that act.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 532.

A previous contract to sell a portion of a Pre-emption claim, vitiates the entry, and the same cannot be confirmed under confirmatory laws.

GENERAL LAND OFFICE,
July 2, 1859.

Sir:—Herewith, I have the honor to enclose you all the papers connected with the pre-emption claim and entry of John A. Harbach, within the corporate limits of the City of Omaha, and in the district of lands subject to sale at Omaha, Nebraska Territory. Harbach's entry or location, was made per warrant No. 71061, Act of 1855, on the 21st of November, 1857, and embraced the south half of northeast quarter, and south half of northwest quarter, section 15, township 15 north, range 13, east. Soon after the entry was made, affidavits were received at this Office, impeaching Harbach's claim, and in consequence thereof, a reinvestigation of the case was ordered, per letter from this Office, dated March 6, 1858. The investigation was held, in pursuance of the order contained in said letter, on the 12th May, 1858, and, from the testimony elicited, the Register and Receiver decided adverse to the pre-emptor's right. An appeal from their decision having been taken to this Office, the testimony was forwarded here by the Register, per letter of 5th June, 1858, and after a careful examination of the facts in the case, the acting Commissioner expressed his concurrence in the decision of the Register and Receiver, per letter to them of 24th ult., on the ground mainly, that the location by said Harbach, was made in fraud of the 13th section of the Act of 1841.

From the decision of this Office, Messrs. R. M. Young and H. L. Stevens, attorneys for Harbach, have appealed and filed their exceptions, which are enclosed herewith, and will be briefly noticed.

1st. The entry *was* made in fraud of the 13th section of the Act of 4th September, 1841, as uniformly construed by this Office. Said entry was made on the 21st November, 1857. On the 26th January, 1857, ten months prior to the entry, Harbach executed an unqualified quit claim deed to Messrs Jones and Macon, of certain portions of the identical land embraced in his pre-emption. (See copy of deed "A" taken from the records of Douglass county.)

2nd. The deed "A" referred to, acknowledged by Harbach's counsel to be genuine, is "evidence in the case," establishing Harbach's violation of the 13th section of the Act aforesaid. (See testimony, page 5.)

3d. The deed of conveyance from Harbach to Jones and Macon, under date of 26th January, 1837, was in law an "agreement" or "contract," by which the title which Harbach might thereafter acquire from the government of the United States "should enure in whole or in part" to the benefit of another person. At the time of the conveyance his title to the land, if he had any, was merely inchoate. It was to be *perfected* at a future time. By giving an unqualified quit claim deed, he conveyed all his right, title and interest in and to the land deeded, *present* and *prospective*; while, therefore, the title of the vendees could only have been perfected, so far as the rest of the world was concerned, upon the perfection of Harbach's title, yet so far as he, (Harbach,) was concerned, their title was perfect from the day of the execution of the deed. It follows, as a consequence, that, as they never re-deeded to Harbach, the "agreement" or "contract" made in January, 1857, between the vendor and vendees aforesaid, was such a one as, had the fraud been consummated, would have caused the title which Harbach might have acquired, by patent from the

Government, to have enured "in whole or in part, to the benefit" of other persons besides himself.

4th. There is a map on the files of this Office, and it is enclosed herewith, which proves conclusively that all the subdivisions or lots conveyed by Harbach to Jones and Macon, are within the boundaries of his pre-emption entry, made November 21, 1857.

5th. The testimony of Augustus Macon, one of the parties to the aforesaid deed, that at the time of the making of the deed, the parties thereto *supposed* that the lands were in another section, is not admissible. "The law places more reliance upon written than oral testimony; and it is an inflexible rule that parol testimony is not admissible to supply or contradict, enlarge or vary the words of a contract in writing. That would be the substitution of parol to written evidence *under the hand of the party*, and it would lead to uncertainty, *error and fraud*." (See Kent, vol. 2, p. 757.)

6th. Whether or not the "oath of the appellant, under the 13th section of the Act of 1841," is conclusive upon the Commissioner of the General Land Office, the evidence of fraud in the case, makes it incumbent upon me to *suspend the entry* and prevent the issuing of a patent thereon, at least until the evidence of fraud is removed by the courts, and this purpose is subserved by a cancellation of the certificate of entry or location.

7th. From the foregoing statements and positions of law, it results that the entry of Harbach *cannot* be filed for confirmation under the Act of 26th June, 1856.

Very respectfully,

Your obedient servant,

THOS. A. HENDRICKS, Commissioner.

Hon. Jacob Thompson, Secretary of the Interior.

Affirmed 6th October, 1859. See "Town Site" division, p. 430.

No. 533.

Where a Pre-emption Claimant has filed for one hundred and sixty acres, but is unable to pay therefor, and his entry of a portion of the tract was permitted, the same may be confirmed.

DEPARTMENT OF THE INTERIOR,
Washington, December 2, 1859.

Sir:—In the case of Wade H. Bostick, who has appealed from your order of July 12, 1859, to the Register and Receiver at Monroe, Louisiana, I am of the opinion that the cancellation should be set aside, and the entry submitted for the favorable action of the Board of Suspended Entries.

The claimant appears to have been acting in good faith. His reason for not entering all the land he filed for, is that he was unable to pay for the whole, and the land he has entered embraces his house and improvements.

The papers which accompanied your report of the 28th ult., are now returned.

Very respectfully,

Your obedient servant,

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

TITLE VI.

School Lands.

No. 534.

*Circular to Registers and Receivers of the United States Land Offices.*GENERAL LAND OFFICE,
May 17, 1844.

Gentlemen:—Should there exist in your land district any instances where the sixteenth section, usually set apart for school purposes, is interfered with in any township or fractional township, either wholly or partially, by private confirmed claims or donations, you are to regard such township or fractional township as entitled to a selection, for the use of schools, of other lands in the district, under the provisions of the Act of Congress approved May 20, 1826, (No. 18,) entitled “An act to appropriate lands for the support of schools in certain townships and fractional townships not before provided for,” the Secretary of the Treasury having recently rescinded the tenth paragraph of the instruction contained in the printed circular of August 30, 1832, in relation to school lands under the Act aforesaid, which is adverse to the decision now given.

The selections of school land herein intended are to be made under the rules prescribed in the circular referred to.

Very respectfully, your obedient servant,

THOS. H. BLAKE, Commissioner.

Register and Receiver.

Under the Act of May 20, 1826, (No. 18,) granting lands for the support of schools, the Secretary of the Treasury (Interior) had power to decide, as between the school trustees, for a township, and one claiming under a private entry, whether the land in question had been duly selected and set apart for the schools of the township; and his decision was final.—*Campbell v. Doe*, 13 Howard, 244; 19 Condensed Reports, 477.

It has always been a cherished policy of the Government of the United States, to appropriate section sixteen, in every township, for the use of schools. Reservations were made in the sale of other lands which contained salt springs or lead mines, but not in the appropriation of section sixteen for schools.

When the State of Michigan was admitted into the Union, it was upon the condition, that every section numbered sixteen, in every township of the public lands, and where such section has been sold or otherwise disposed of, other lands equivalent thereto and as contiguous as may be, shall be granted to the State for the use of schools.

When the lands are surveyed and marked out, the title of the State attaches to number sixteen, and if there be no legal impediment, becomes a legal title. The Act of March 1, 1847, providing for the sale of mineral lands, does not include section sixteen, which remains subject to the compact with Michigan.—*Cooper v. Roberts*, 18 Howard, 173.

Where a part of section sixteen is disposed of, the State is not bound to select the residue, but may take an equivalent or other sections, (under Cherokee Treaties, July, 1817, and February, 1819.) The act of selection of a section in lieu of section six-

No. 535.

Circular to the Land Officers in the Territories.

GENERAL LAND OFFICE,
June 25, 1844.

Gentlemen :—The Act of Congress approved on the 15th instant, entitled “An act to authorize the selection of certain school lands in the Territories of Florida, Iowa, and Wisconsin,” (No. 83,) declares “that wherever the sixteenth sections in said Territories, either in whole or in part, are now, or may hereafter be, included in private claims held by titles confirmed or legally decided to be valid and sufficient, other lands equivalent thereto, within any land district in said Territories most adjacent to said lands so taken up by private claims,” may be selected in lieu thereof.

The Act directs that the selections thus to be made are to be of lands “which have been offered at public sale and remain unsold.”

With the view of carrying this Act into effect, you are required, in the first place, to prepare and report to this office a list of all the townships and fractional townships wherein the sixteenth sections are covered in whole or in part by the private claims of individuals within the limits of your district, designating in each case the name of the claimant, with the date or number of confirmation, or such other memoranda respecting it as will enable this Office readily to refer to its history, and thereby form an opinion as to its validity.

On the receipt and examination of such report, you will be immediately advised of the quantities of land which may be required to be selected in conformity with the provisions of this Act.

Very respectfully, your obedient servant,
THOS. H. BLAKE, Commissioner.

Register and Receiver at —.

teen, is that by which the tract becomes appropriated for school purposes.—(Opinion of Attorney General, August 12, 1830, vol. 2, p. 360.)

A valid pre-emption, under Act of 1829, however, cannot be avoided by the selection.—*Ib.*

School sections,—no allowance for portion covered by water. Rights of riparian proprietors,—State jurisdiction.

In regard to a question recently presented, as to the rights of riparian proprietors on Beaver Lake, Indiana, represented on the public surveys as a navigable watercourse, we stated that the laws of the United States declare, that all navigable waters shall be deemed to be and remain public highways, that the Surveyors General are required to meander all such, and deduct their surface from the contents of the sections, and that the 2d section of the Act of 11th February, 1805, confirms the returns, made by the Surveyors General, according to which the lands are sold, and the titles pass to the purchasers. That the United States, therefore, after the lands have been sold and patented, have nothing more to do with the right acquired by the riparian proprietors, for here the general land laws cease, and the State laws, operate in the premises.—(Report of Chief Clerk of General Land Office for January, 1856.)

No. 536.

Circular to Registers and Receivers of the United States land offices in California.

GENERAL LAND OFFICE,
March 6, 1854.

Gentlemen :—Your attention is directed to the following Act of Congress, approved 1st March, 1854 : “ An act for the extension of the pre-emption privilege in the State of California, (No. 233.)—*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the provisions of the Act of the fourth of September, eighteen hundred and forty-one, granting pre-emption rights to the settlers on the public lands, as modified and made applicable to the State of California, by the Act of third of March, eighteen hundred and fifty-three, shall be further modified by extending the provisions of the third proviso in the sixth section of the aforesaid Act of the third of March, eighteen hundred and fifty-three, to settlements made prior to, and within two years after the passage of this act.”

By it, the provisions of the pre-emption law of September 4, 1841, are extended to all settlements on *unsurveyed* public lands in California, made “prior to, and within two years after the passage of this Act,” that is, *prior to the 1st of March, 1856*; and if any such settlement should prove, after the return of the plat, to be upon the “sixteenth,” or “thirty-sixth” section, reserved for schools, such settlement right will attach, and other school lands must be selected in lieu of the tract thus settled and claimed.

JOHN WILSON, Commissioner.

No. 537.

The Act of 23d June, 1836, admitting Michigan into the Union, contained an absolute grant to the State of every sixteenth section, which had not been disposed of.

DEPARTMENT OF THE INTERIOR,
September 10, 1851.

Sir:—I have examined the claim of the State of Michigan, under the compact for her admission into the Union against certain lessees, under the Act 1st March, 1847, (No. 127,) to sections numbered sixteen, which were the subject of your report to me of the 16th of June last.

The first proposition in the Act of Congress of 23d June, 1836, for the admission of Michigan into the Union as a State is, “That section numbered sixteen, in every township of the Public Lands, and where such section has been sold or otherwise disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to the State for the use of schools.”

This with the other propositions of the Act of June 23, 1836, were to be “offered to the Legislature of the state of Michigan, for their acceptance or rejection,” and “if accepted under the authority conferred on the said Legislature by the Convention which framed the constitution of the State,” were to be “obligatory upon the United States.”

These propositions were accepted, and the irrevocable ordinance, required by the 5th proposition, was provided by an act of the Legislature of Michigan, approved the 25th July, 1836. On the 1st March, 1847, Congress passed “An act to establish a land office in the northern part of Michigan, and to provide for the sale of mineral lands, in the State of

Michigan." The second section of that Act, requires that a geological examination and survey of the lands comprising this new land district, should be made, and that such land as might be found to contain copper, lead, or other valuable ores, be exposed for sale, giving six months' notice of the time and place, and that all the lands embraced in said district, not reported as containing valuable ores, "should be sold in the same manner as other lands," under the laws then in force for the sale of public lands, "excepting and reserving from such sales section sixteen, in each township, for the use of schools, and such reservations as the President shall deem necessary for public uses."

This third section provides that all persons who are in possession, by actual occupancy, of any portion of the district described in the first section, whether under authority of a lease or permit from the Secretary of War or not, for the purpose of mining thereon, may purchase the same under certain conditions and restrictions. Under the law of 1st March, 1847, a part of section 16, in townships 50 and 58, of ranges 39 and 40, west, respectively, is claimed under a lease from the Secretary of War; while the State claims under the first proposition of the Act of 23d June, 1836, for her admission into the Union. The questions which arise in this case are purely legal, being as to the proper construction of the Acts of 1836 and 1847. The first proposition of the Act of June 23, 1836, which was accepted by the State of Michigan, and thereby became obligatory upon the United States, is in these words: "That section numbered sixteen, in every township of the public lands, and where such section has been sold or otherwise disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to the State for the use of schools." You contended that this language does not amount to a present grant, and that its true meaning and intent are, that section sixteen in every township, which, upon being surveyed, shall be found not to have been sold or otherwise disposed of, shall be granted for the use of schools. In this I do not concur; I regard it as an absolute grant of every sixteenth section which had not, on the 23d June, 1836, been sold or otherwise disposed of, whether then designated by survey or not; and the fact that the same language was used in the admission of Ohio into the Union in 1802, and in the admission of all the other States subsequent to that time, has passed to the States the title to sections sixteen, without further legislation; the issuing of a patent or other action by the General Land Office, shows that it has always been regarded as a present grant. It is also contended that this construction of the Act of 1836, will render the Act of 1st March, 1847, nugatory; that the Act of 1847 grants certain privileges to, and confers certain rights upon occupants of these mineral lands; and that under Attorney-General Legaré's opinion of 29th April, 1842, the Executive is bound to execute a law of Congress where the will of that body is clearly expressed, even though the provisions of that law are inconsistent with previous legislation. Where a law of Congress is clearly inconsistent with prior legislation, I agree with Mr. Legaré that the Executive is bound to execute it; but in construing the subsequent law, we must construe them as statutes upon the same subject in *pari materia*; and if possible make them harmonize, so that Congress may not be charged with injustice or absurdity.

But I do not regard the Act of 1847 as inconsistent with that of 1836, nor as containing language sufficiently ambiguous to give rise to serious doubts as to its true intent and meaning. The Act of 1836 had granted to the State all sections numbered sixteen, which had not then been sold or otherwise disposed of; and it would not have been constitutional or just in Congress, in 1847, to violate that law, or annul the grant made by solemn

compact with the State; and the concluding portion of the second section of the Act of March 1, 1847, was designed, in my opinion, to exclude from its operation all sixteenth sections, and such reservations as the President might deem necessary for public uses, whether such sections or reservations were mineral or agricultural lands. Without going further into the subject, it being deemed unnecessary, your decision of 22d April last, adverse to the claim of the State of Michigan to the sixteenth sections in the mineral regions, is reversed, and the papers which were submitted with your letter of 16th June last, are herewith returned.

A. H. H. STUART, Secretary.

Commissioner of the General Land Office.

No. 538.

An approval of lands selected for University purposes, to which prior rights had attached, will not be regarded as conclusive.

DEPARTMENT OF THE INTERIOR,
December 13, 1855.

Your letter of the 11th instant, on the subject of an approval by the Department on the 19th April last, of a list of selections for university purposes, in the State of Wisconsin, under the Act of 15th December, 1854, has been received. A list is enclosed, exhibiting twenty-two cases of actual sale, and twenty-seven cases of claims by pre-emption, embracing land which was heretofore submitted for and received the approval of the Department, as selections free from known adverse claims, and the object is to procure the rescinding of such approval as to the tracts embraced in said list. The approval as stated by you, was a conditional one, saving the rights of adverse parties, and therefore did not actually, in a legal sense, embrace tracts previously sold, or which, claimed as pre-emptions by virtue of settlements made prior to 15th December, 1854, may be in due time consummated, but such approval to the extent indicated, is hereby formally revoked,* in order that the course mentioned by you may be taken to prevent any disposition of said tracts by the State, under the erroneous impression that they belong to her.

R. M'CLELLAND, Secretary.

Commissioner of the General Land Office.

No. 539.

A settler, whose improvements are partly on a school section in Minnesota, is entitled to the benefit of the Act of 3d March, 1857. (No. 320.)

GENERAL LAND OFFICE,
July 14, 1857.

Sir:—In reply to your letter of the 3d inst., I have to state that those settlers in Minnesota, who, prior to the surveys, entered upon and improved public lands with a view to pre-emption, and who, subsequently to the return of the plats, found their improvements to be, in part, on the school section, sixteen or thirty-six, and who, in consequence, have heretofore, and prior to the passage of the Act of 3d March last, (No. 320,) entered their

* This policy has since been changed.

claims—including only such portions as were outside of the school section—are regarded by this office as occupying the same position or ground, under the said law of 1857, as those whose improvements were found to be wholly on the school sections, and which latter class can now secure all the land claimed under the said act.

In other words, suppose a case :—Upon the return of survey, A. found his improvements on the west half northwest quarter section 15, and east half northeast quarter section 16. He was of course restricted in his entry to the west half northwest quarter section 15, said entry having been made before the passage of the law of 3d March last.

Then comes the relief law, to protect settlers, who, in ignorance of where the lines would run, made improvements upon what turned out to be school land.

A. having lost a part of his land, is surely just as much entitled to the benefits of said law as another, whose improvements are wholly on the reserved section ; and regarding both classes as equally contemplated by the law of 1857, I should not hesitate to authorize a correction of the entry in the first mentioned case, so as to embrace all the land claimed under the law, upon satisfactory evidence being furnished, that the party claiming had made improvements upon the portion returned as school land.

Very respectfully,

THOS. A. HENDRICKS, Commissioner.

To Hon. H. M. Rice.

No. 540.

Fractional Townships in California, not containing sections sixteen and thirty-six, are not provided for by the law allowing selections in lieu, &c.

GENERAL LAND OFFICE,
April 12, 1858.

Sir :—I have the honor to acknowledge the receipt of a copy of the preamble and resolutions adopted by the two houses of the California legislature, in relation to the surveying of mountainous districts in that State, which were transmitted to you by his excellency the Governor of California, and by you referred to this Office for consideration.

As the surveys in that State already cover large areas of land, of a quality to attract emigration and settlement, which are not likely to be all taken up and occupied for some years to come, and as the extension of those surveys already made over mountains that are wholly or partially inaccessible for such a purpose, will involve a heavy expenditure without any practical benefit, this Office cannot advise or recommend such surveys to be made.

The Act of Congress of 3d March, 1853, (No. 224,) donating to the State of California, for school purposes, the sixteenth and thirty-sixth sections of every township of land that might be surveyed therein, was intended to apply only to such townships as might contain those sections in full or in part. Where townships were made fractional by their coming in contact with oceans, lakes, navigable rivers or sterile mountains, inaccessible to deputy surveyors, except at great personal sacrifice to themselves, and a useless expense to the government, it was impossible for the State to have the benefit of the sixteenth and thirty-sixth sections, or where such sections in land were not to be found. There are quite a number of townships in other States and Territories, where the sections (or single section) donated to them for school purposes, are either entirely excluded

by the fractional shape of the townships, or much reduced in area by the intervention of small lakes or navigable rivers, and no complaint has come from any of them about such unavoidable deficiencies in many cases.

The 7th section of the Act of March 3, 1853, provides, "that where any settlement, by the erection of a dwelling-house, or the cultivation of any portion of the land, shall be made upon the sixteenth and thirty-sixth sections before the same shall be surveyed, or where such sections may be reserved for public uses, or taken by private claims, other land shall be selected by the proper authorities of the State in lieu thereof," but it makes no provision for supplying deficiencies to the State, arising from the omission to survey mountainous regions, "unfit for cultivation," as said Act directs.

I have the honor to be, very respectfully, your obedient servant,

Hon. Jacob Thompson,
Secretary of the Interior.

THOS. A. HENDRICKS,
Commissioner.

No. 541.

By the Act organizing Kansas, sections sixteen and thirty-six are not granted, but are merely reserved by Congress for School purposes.

DEPARTMENT OF THE INTERIOR,
September 23, 1858.

In your letter of the 27th ultimo, transmitting the papers which accompanied the appeal taken by Major R. H. Weightman, from a decision rendered by you in the Pre-emption Case of Elisha Reno, from the Kickapoo, Kansas, Land Office; you state, that "the only point presented by the appeal is, did the 34th section of the Act of 30th May, 1854, (No. 239,) make an absolute grant *in presenti*, of the fee-simple title of sections sixteen and thirty-six to the Territory of Kansas, so as to invest the legislature thereof with power to dispose of the same."

I do not hesitate in deciding, that the construction given by you to the language of said 34th section, is correct. Sections sixteen and thirty-six, are not granted, dedicated, or disposed of, but are simply *reserved* by Congress for the purpose of being applied to schools. No trust was created by said Act unless Congress itself assumed it. That Congress did not intend to divest itself of all power over, and control of, said lands, is evident from the very terms employed. But if any doubt on this point could exist, it would be removed by the joint Resolution, approved 3d March, 1857, (No. 320,) which provides, that where any settlements, &c., shall be made upon sections sixteen and thirty-six before the survey thereof, other sections shall be selected in lieu thereof.

This Resolution, is tantamount to a legislative declaration of the meaning, and will govern the construction of the former law. By it, Congress has not only claimed, but has exercised the power of disposing of said sections sixteen and thirty-six. This Department will not in any event, disregard a positive Act of Congress, until the same shall be pronounced null and void by a court of competent authority.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 542.

A Settler on sections sixteen or thirty-six, in Minnesota, is not entitled to the right of Pre-emption, if his settlement was not made prior to the survey.

DEPARTMENT OF THE INTERIOR,
Washington, June 20, 1859.

Sir:—The papers which accompanied your report of the 12th April last, in the appeal of N. P. Causin, Esq., attorney for E. S. Hanscome, from your decision of the 1st of that month, as contained in your letter of that date to Mr. Causin, are herewith returned. I concur in your conclusion adverse to the right of Hanscome.

After an examination of the laws relative to sections Nos. 36 and 16, in Minnesota, viz., Act 3d March, 1849, February 19, 1851, February 26, 1857, March 3, 1857, May 11, 1858, and February 26, 1859, it is clear to me that the State is entitled to all lands in the sections of those numbers, to which no valid pre-emption claim can be established under the joint Resolution of 3d March, 1857, (No. 320,) and the Act of February 20, 1859.

Hanscome not being a settler before survey, is not entitled to a pre-emption right in the land he claims, and so far as anything to the contrary now appears, the title of the State has become absolute, and he must look to the State laws for relief.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 543.

*School sections in the Lake Pepin Reserve, Minnesota, are not subject to Pre-emption Settlement after survey.
A Half-breed settler or occupant may locate Scrip thereon.*

DEPARTMENT OF THE INTERIOR,
Washington, July 18, 1859.

Sir:—In the case of Jas. D. Hutchinson's appeal from your order, cancelling his pre-emption entry in a school section, within what is called the Sioux Half-breed Reserve, submitted with your report of the 20th ultimo I concur in the opinion expressed in said report, that sections sixteen and thirty-six, within said reserve, are not subject to pre-emption based on settlements made after the surveys, but are to be regarded as school lands.

The only class of cases in which such sections appear to be subject to location with scrip, are those in which the party to whom the scrip issued, was at the time of its delivery to him, a half-breed settler or occupant of the particular lands, and maintained possession thereof until the location of the scrip was effected.

In such cases, the actual possession by the Indian, under the treaty of 1830, and the law of 1854, (No. 243,) maintained until after the application of the land in satisfaction of his own scrip, may be regarded as such an appropriation of the land to private use, in accordance with law, as to exclude the reservation, or the grant for school purposes, from attaching to the particular tracts.

Mr. Hutchinson's letter is now returned.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

TITLE VII.

Internal Improvement Selections.

No. 544.

*Circular to Registers of United States land offices.*GENERAL LAND OFFICE,
February 21, 1846.

Sir:—To simplify the mode of proceeding in making State selections under the 8th section of the Act of Congress, 4th September, 1841, (No. 48,) and to enable the States to close up this intricate business as soon as possible, I have deemed it expedient to adopt the following regulations:

1st. That if the State selects a tract of land which contains three hundred and twenty acres, the compact parcel required by law, and on examination by this Office it is ascertained that a portion of it is interfered with

The eighth section of the Act of 4th September, 1841, (No. 48,) granting lands to Louisiana and other States, did not vest the fee in those States. In a suit to try the legal title, one claiming such land under a patent from the United States, must prevail over one claiming under a patent from the State.—*Foley v. Harrison*, 15 How. 433; 20 Condensed Reports, 589.

Under the Act of Congress of August 3, 1846, (No. 110,) the Commissioner of the Land Office, the Secretary of the Treasury, (Interior) and the Attorney General, had power to decide finally on claims of these parties, and their decision, and a patent issued in accordance therewith, were conclusive in a suit for the land.—*Ib.*

The States to which five hundred thousand acres of land were given for internal improvements, are not entitled to take any land to which pre-emption rights exist.—(Opinion of Attorney-General, July 11, 1842, vol. 4, p. 71.)

The Des Moines Improvement.

Congress, in 1846, for the purpose of improving the navigation of the river Des Moines, "from its mouth to Raccoon Fork," granted to the Territory of Iowa alternate sections of land "in a strip five miles in width on each side of said river."

As construed by the Government at the time, and as accepted by the State of Iowa, this grant extended only to the Raccoon Fork.

Subsequently to this, the Secretary, for the time being, (Walker,) expressed an opinion that the grant extended up the river to its source; but went out of office the next day without this opinion having yet received execution.

The succeeding Secretary (Ewing,) entertained a different opinion, and refused to approve selections above the Fork.

Reference being made to the Attorney General, (Johnson,) he expressed an opinion that the grant extended to the source of the river; but the Secretary did not act on that opinion.

Reference was then made to the succeeding Attorney General, (Crittenden,) who held that the grant did not extend above the Fork.

The Secretary (Stuart,) entertained, and officially expressed the same opinion, but without changing his opinion, and in his order, expressly saying it was unchanged, he ordered selections to be allowed above the Fork, up to the north boundary of the State."

On question of the duty of the present Secretary (McClelland,) in these circumstances, it is held:

1. The true construction of the act, and its intention, were to grant lands from the mouth of the river Des Moines to the Raccoon Fork, and no further.

by a *valid* claim, the *residue* will be approved, notwithstanding it may contain *less* than three hundred and twenty acres *after* the rejection of the part interfered with, because, in the *first* instance, the law was complied with.

2d. If the State selects a tract of land *covered at the time* by the declaratory statement of a pre-emption, that fact does *not* invalidate the selection, if, at the expiration of the time allowed by law, the pre-emption claimant fails to establish his claim.

3d. When selections reported to this Office are found to conflict with the declaratory statements of pre-emptions, the approval of the selections thus covered by such statements will be suspended to await the result of the pre-emption claims, which if not established at the expiration of the period allowed by law, the selections of the State will then be approved; and this regulation will apply to all cases of selections heretofore made which have *not* already been finally disposed of by the Secretary of the Treasury.

I am, very respectfully,

Your obedient servant,
JAS. SHIELDS, Commissioner.

No. 545.

State Selections. Circular to the United States Registers.

GENERAL LAND OFFICE,
August 6, 1847.

Sir:—Herewith you will receive a copy of the 8th section of the Act of 4th September, 1841, (see No. 48,) entitled “An act to appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights.”

In order to facilitate the business of State selections under this act, I have to draw your attention to the following:—

1st. The whole area to which the State of ——— is entitled under this law, is ——— acres.

2d. The act requires the selections to be “in parcels conformably to sectional divisions and subdivisions of not less than three hundred and twenty acres in any one location,” &c.

Under this requirement, a selection may include a *whole* section or a *fractional* section, or an island containing three hundred and twenty acres,

2. *Even if, by construction heretofore, the grant be extended above the Fork, it cannot pass beyond the limits of the State of Iowa into Minnesota.*

3. *The opinion expressed by Secretary Walker, being opinion only, did not conclude any of his successors or bind the Government.*

4. *The action of Secretary Stuart cannot be reversed by his successor in so far as regards selections made and approved by him, but is not obligatory any further on himself or his successors.*

5. *The opinion of the Attorney General for the time being, is in terms advisory to the Secretary who calls for it; but it is obligatory as the law of the case, unless, on appeal by such Secretary to the common superior of himself and the Attorney General, namely, the President of the United States, it be by the latter overruled.*

6. *In the present state of this question, the actual Secretary is free to elect either to act on the opinion of Secretary Walker, as construed by Secretary Stuart, and approve up to the north boundary of the State, and no higher, or to return to the true and original construction of the act, refusing to allow further selections above the Racoon Fork.*

7. *But the Secretary cannot lawfully acquiesce in and abide by the rule of action of Secretary Stuart, unless that rule be also accepted by the State of Iowa; it no more binds one than the other; and, unless the State relinquish all claim to land above its north boundary, the Secretary is bound to refuse to permit selections above the Racoon Fork.— (Opinion of Attorney-General, May 29, 1856; vol. 7, p. 691.)*

more or less; provided the State, where the quantity is less than the prescribed number of acres, will agree to accept the same for and in lieu of a tract containing the full quantity of three hundred and twenty acres but not otherwise.

Or it may embrace the *east, west, north, or south* half of a section, or two *adjoining quarters* of different sections, or any number even of the smallest legal subdivisions of different sections; *provided* the tracts selected *adjoin* each other, and form *compact* parcels, containing *together* not less than three hundred and twenty acres.

3d. The selections must be *based* upon the official township plats of the public surveys, which are *required* to be *approved* by the Surveyor-General, and on file in the local land office *at the time of filing* the selection.

4th. The law allows selections to be made upon public lands, whether *offered or unoffered*. But no State selection is admissible upon any land to which a *pre-emption or other valid* claim shall be legally established, nor on any land which "is or may be reserved from sale by any law of Congress, or proclamation of the President of the United States," nor upon any tract which is *reserved or withdrawn* from market for any purpose whatever.

5th. The selecting agent of the State should file in your office, an authenticated copy of his letter of appointment, or other satisfactory evidence of his authority: and—

It is important and necessary that he should make such careful and thorough preliminary examinations as will enable him to select lands to which there may exist no valid claim by pre-emption or otherwise; and to avoid the embarrassments and delays consequent upon such conflicts, *you* will also examine the plats, records, and papers in your office, *before* the lists of lands so selected are filed, and see that such selections are in all respects free from such objections.

6th. If, notwithstanding such precaution, the State shall hereafter select lands which shall be found to be interfered with by any *prior* and better claim or claims, the selection to the *whole* extent of such, [claim or claims,] will of course be null and void; and if such valid claim or claims shall *only* extend to a part of the selection, by the rejection of which the *remaining* portion or portions shall be reduced to *one or more detached* bodies below the quantity of three hundred and twenty acres, the part or parts *not* interfered with may, nevertheless, be confirmed, provided the State will accept *each detached parcel* which may thus be reduced to *less* than three hundred and twenty, as equivalent to, and in lieu of the full quantity of three hundred and twenty acres; otherwise such parts or parcels will be rejected on the ground of the land not forming the *compact* parcel required by law.

7th. That the action of this Office may be uniform, it is hereby determined, from the date of this circular, that when selections are reported to this Office which are found to conflict with declaratory statements of pre-emptors, the approval of that part of the selection *thus covered* by such statement, *together* with such portion as may not be interfered with, but which would be less than three hundred and twenty acres, if the *part covered* by the declaration should be *confirmed* to the claimant, will be suspended to await the *final* result of the pre-emption claims, which, if not established at the expiration of the period allowed by law, the selection of the State will then be approved.

8th. Should a tract of land be selected by the State and rejected on the ground of *not* forming the compact parcel required by law, it is *no bar* to its being *re-selected*, provided other land *not* interfered with is selected in

connection with it, so as to form the *compact* parcel of three hundred and twenty acres, or more, as the case may be. Should such re-selections be made they are required to be embraced in an *entire* new list, bearing the number of the series *at the time* of such re-selection.

Herewith you will receive the form of a list to be used for selections. This form requires the *date* to be given *when the list is filed* in your office; such date being regarded as the date of selection, so that in the event of a pre-emption or other conflict, the question, as to priority of right, may be properly settled. The lists should bear a regular series of numbers from No. 1, and should be signed by the agent. If the list is regular and complete, you will enter up the selections on your books, and mark them on the plats, sign the official certificate as to the correctness of the list of selections, and transmit the same to this Office, in order that it may be submitted to the Secretary of the Treasury for his approval.

The law of Congress allows no commissions on this business.

You are requested to acknowledge the receipt of this circular, which is designed to embrace all the material principles in previous circulars in reference to this subject, and to be your rule of action in relation to this business in future. Very respectfully, your obedient servant,

———, Commissioner.

NOTE.—The States designated in the *first* section of the Act of Congress approved September 4, 1841, entitled “An act to appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights,” are Ohio, Indiana, Illinois, Alabama, Missouri, Mississippi, Louisiana, Arkansas, and Michigan.

OPINIONS OF ATTORNEY-GENERAL.

No. 546.

The Grant for the Improvement of the Des Moines River, (No. 117,) does not extend to the source of the river.

Public Grants must be strictly construed against the grantee.

ATTORNEY-GENERAL'S OFFICE,
November 22, 1858.

Sir:—On the 8th of August, 1846, (No. 117,) Congress made a grant to the Territory of Iowa, in the following words:—“That there be, and hereby is, granted to the Territory of Iowa, for the purpose of aiding said Territory to improve the navigation of the Des Moines river, from its mouth to the Raccoon Fork, (so called,) in said Territory, one equal moiety in alternate sections of the public lands, (remaining unsold, and not otherwise disposed of, encumbered, or appropriated,) in a strip five miles in width on each side of said river, to be selected within said Territory, by an agent or agents to be appointed by the Governor thereof, subject to the approval of the Secretary of the Treasury of the United States.”

The question arising on the construction of this law has been debated for upwards of twelve years without being settled. You ask my opinion upon it now, as if nothing had ever been said or done about it before. I do not doubt that you are right in regarding it as still *sub judice* and undetermined,—open as it ever was, to the operation of the principles which ought to have governed it originally. But in forming our judgment upon it, we cannot help looking up with becoming respect to the opinions of the eminent men who have heretofore had it under consideration.

The Act gives to Iowa, for the purpose of improving the Des Moines, from the mouth to the Raccoon Fork, certain lands on both sides of the river. Does that mean that the Territory shall have the prescribed quantity of lands on all parts of the river up to its source? or, is the grant, like the improvement it aids, confined to that part of the river which runs below the Fork? The simple reading of the Act, leaves on my own mind the impression, that no lands above the Fork were meant to be included. Taking into consideration nothing but the words of the grant, I cannot but think it probable, that the person who drew it, understood it himself, and intended that others should understand it, as giving merely a moiety of the unappropriated public lands which lay within five miles of the river between its mouth and the Fork. I believe too, that such words, in such a collocation, would naturally be supposed by most members of Congress, to concede nothing more. Nor is there, in my opinion, any established rule of interpretation which forbids us to say, that the words "from its mouth to the Raccoon Fork," qualify and limit both the grant and the improvement. The lands given, and the work to be done, are described in the same sentence, and a limitation which is not necessarily confined to one, may well be applied to both, without being repeated. There is an argument, to be sure, and a specious if not a strong one, on the other side. But this does not destroy nor explain the opposing view; it only shows that something may be said on both sides.

The grant is certainly obscure in its phraseology. A person whose faculties are sharpened by an interest in the claim, can see it extending to the head waters of the Des Moines plainly enough, while an advocate of the other side might perceive, with equal clearness, the construction which stops at the Raccoon Fork. Nay, more, it has actually divided the judgment of the ablest men and the soundest lawyers in the service of the government. Mr. Walker and Mr. Johnson could not have been in favor of the larger interpretation, unless there had been cogent and good reasons for it. On the other hand, Mr. Ewing, Mr. Crittenden, and Mr. Cushing, would not have set their faces against it, if opposite considerations of great weight had not been presented to them. And surely, if it had been a tolerably plain case either way, Mr. Stuart and Mr. McClelland would not have kept it poised in their scales for seven years, without determining where the preponderance was; much less would either of them have offered to settle it by compromise. In truth, this law has been treated for a dozen years as no plainly written law could be treated.

But for my own part, I have not the least doubt about it. My reason may seem paradoxical, but the very obscurity of the grant, in my judgment, makes it clear. It is out of these doubts, that certainty grows. In every doubtful case, we know very well what we ought to do, as soon as we ascertain which party is entitled to the benefit of the doubt. We shall see who is entitled to it here.

It is well settled, that all public grants of property, money, or privileges, are to be construed most strictly against the grantee. Whatever is not given expressly, or very clearly implied from the words of the grant, is withheld. This is most especially true of legislative grants, and for very good reasons the rule ought to be adhered to with unyielding firmness. We all know the fact,—and we are not bound to seem ignorant of it,—that gifts like this are often caused by private solicitation and personal influence. The bills are almost universally drawn up by their special friends, and may be made ambiguous on purpose, to disarm their opponents or put suspicion asleep. If you let the grantees have the advantage of the ambiguity which

they themselves put into their own laws, many of them will get a meaning which Congress never thought of.

Acts which were supposed to have but little in them when they passed, will expand into very large dimensions afterwards. An ingenious construction will make that mischievous which was intended to be harmless. The remedy for these evils,—and they are evils to the public morals as well as to the treasury,—is to let all men know that they can get nothing from the United States, except what Congress has chosen to give them, in words so plain, that their sense cannot be mistaken.

I do not know any reason for suspecting the slightest bad faith in this case, but it comes within a general rule which must be maintained, in order to prevent a general mischief. It should, however, be remembered, that the grant was construed at the Land Office, immediately after its passage, to extend no further than the Fork, and this was acquiesced in by the State authorities, for upwards of two years. The idea that it went to the source of the river was certainly an after-thought. I do not say that this estops them now, or that their mistake, if it had been a mistake, should prevent them from getting all that was given. But when this law was on its passage, it would have been easy to say, that half the land on each side of the river up to its source should belong to the Territory. Not being said, we cannot presume that it was intended. A word or two would have put the meaning beyond the reach of a doubt; but the ambiguity was left in the bill, and leaving it there was the fault of its framers and its friends. They, and not the United States, must suffer the consequences.

Yours, very respectfully,

J. S. BLACK.

Hon. Jacob Thompson,
Secretary of the Interior, Washington, D. C.

No. 547.

*The grant to the State of Wisconsin, will embrace lands to which the Indian Title had not been extinguished. All the title which the United States had, or might afterwards acquire, vested in the grantee.
The State acquired no right to any but odd-numbered sections.*

ATTORNEY-GENERAL'S OFFICE,
June 3, 1859.

Sir:—I have received your letter of the 9th instant, relative to the grant of lands on Fox river to the State of Wisconsin by Congress, in the Act of August 8, 1856, (No. 120,) together with its supplements.

The grant is in the following words:—"That there be, and hereby is, granted to the State of Wisconsin, on the admission of such State into the Union, for the purpose of improving the navigation of the Fox and Wisconsin rivers, in the Territory of Wisconsin, and of constructing the canal to unite the said rivers at or near the portage, a quantity of land equal to one-half of three sections in width on each side of said Fox river and the lakes through which it passes from its mouth to the point where the portage canal shall enter the same, and on each side of said canal from one stream to the other, reserving the alternate sections to the United States, to be selected under the direction of the Governor of said State, and such selection to be approved by the President of the United States."

1st. This grant lay afoul of the Stockbridge Indian Reserve, and the

title of the tribe for which it had been set apart, was not extinguished until 1856. The question now arises, whether upon the treaty with the Indians, the State of Wisconsin obtained a right to the lands granted her within the reserve, or whether the grant is *pro tanto* void, for want of title in the United States at the time it was made.

I do not think this a problem of difficult solution, if we apply to it the principles of law and equity which govern analogous cases. When one party grants lands in which he has no estate, a title subsequently acquired by him, enures not to his own benefit, but to that of his grantee. Besides, the United States *had* title at the time of the grant, and the right of the Indians was no more than a usufruct. Nothing, it seems to me, can be clearer than this proposition; namely, that when the United States by a legislative grant, give land to a State, a corporation, or an individual, for public purposes, all the title which the United States had at the time of the grant, or may afterwards acquire, vests in the grantee, unless the grantee has done something in the mean time, which estops him from claiming. In this case, it does not appear that the State of Wisconsin took lands elsewhere, in place of those which were given to her within the Indian Reserve.

2d. Some of the lands given to Wisconsin by the Act of 1846, had been previously appropriated by settlers or purchasers, and this prevented the State from getting all that Congress intended her to have. Several efforts were made to make up for this loss, by giving other lands. Finally, the Act of 3d August, 1854, was passed, which compensated her for the lands she failed to get within the limits of the original grant, by allowing her to select an equal quantity "out of any unsold public lands in the State, subject to private entry, at one dollar and twenty-five cents per acre, and not claimed by pre-emption." It must be remembered, that the original grant gave her alternate sections within certain limits. She chose the odd numbered sections, and left those which lay between to the government. She now demands the even numbered sections within the same limits, and whether she can have them or not, is your second question.

Most undoubtedly she cannot. On what principle will she pretend to claim them? Not under the Act of 1846, for that confines her to alternate sections. Not under the Act of 1854, for that excludes from her choice all public lands, which are subject to private entry at a higher price than one dollar and twenty-five cents per acre; and she knows, of course, that these sections are held at double that sum. Nor will it do to say, that the Act of 1854 is unconstitutional, for three most conclusive reasons:—First. It is constitutional. Second. An executive officer cannot *pronounce* it void. Third. The State of Wisconsin is *estopped* to deny its validity. She cannot accept its benefits and repudiate its restrictions.

My opinion, therefore, is in favor of the State on the first question, and against her on the second. I think she may claim within the Reserve just as if the Indian title had been extinguished before the date of the first Act. But she is not entitled, under any law that has yet been passed, to take even sections where she has already got the odd ones.

In am, very respectfully,

J. S. BLACK.

Hon. Jacob Thompson, Secretary of the Interior.

DECISIONS.

No. 548.

The Department has no power to issue patents for lands selected under the Act of 1841, where the law does not authorize it, but provides another mode for passing title.

DEPARTMENT OF THE INTERIOR,
November 10, 1856.

Having duly considered the subject brought to my attention personally, a few days since, and especially referred to in your letter of this date, I have not been able to satisfy myself that the Department has any power to issue patents where the law not only does not authorize it to be done, but provides another mode for the passing of the title to the lands in question, and the practice having been in accordance with this view of the absence of authority, I deem it proper to adhere to it. In the opinion of the Attorney-General of the 29th May last, on the Des Moines river case, it is stated: "In so far as regards selections already approved, whether by yourself or by Mr. Stuart, it is clear, that the Government cannot undo that. What Mr. Stuart did, in this respect, with deliberation; what you did, without the questions involved being suggested to you, was, in each case, done by the competent legal authority, and binds the Government. One secretary has no more lawful power to undo a thing, lawfully done by his predecessor, in a matter of grant, than in a matter of account; no more right, where a settlement is in favor of a third party, than where it is in favor of the United States. Where a thing is decided and done by the head of a department, acting within the scope of his lawful authority, it can be revised by his successor only on the ground of a mistake, in a matter of fact, or the discovery and production of material new testimony. [Mr. Crittendon's Opinion of December 28, 1852; see also *Bank of Metropolis v. United States*, 15 Peters, 400; *Ex parte Randolph*, 11 Brocken. 470.] If the acts of Mr. Stuart and yourself, in this respect, had undertaken (as they do not,) to dispose of any contending rights of third parties, the latter would have had their remedy at law. But what you have done is final, as respects the United States."

In the foregoing views of the Attorney-General, I have concurred, and for the reason that the acts of approval by Mr. Stuart and myself have divested the United States of the title. I can see still further grounds to decline issuing a patent or patents, as that would be assuming that the title had not yet passed, and the question would be yet open for adjustment, like selections not yet approved.

R. McCLELLAND, Secretary.

Hon. Reverdy Johnson.

No. 549.

The President questions his power to reverse the decision of the Secretary, in the matter of the Fox and Wisconsin River Grant, and affirms the same.

DEPARTMENT OF THE INTERIOR,
February 13, 1857.

I herewith return the original draft of the decision of the Department, of the 26th March, 1855, which was furnished your office at that date, and

subsequently obtained to be laid before the President of the United States upon an appeal to him from such decision : upon its last sheet, will be found an indorsement in the words and figures following :—

EXECUTIVE OFFICE,
February 11, 1857.

I have duly considered the appeal from the decision of the Secretary of the Interior, in the matter of the grant of certain lands to Wisconsin in aid of the improvement of the Fox and Wisconsin rivers, and the argument of council for the State of Wisconsin. Although my power to reverse the decision of the Secretary of the Interior, under the special provisions of the law in this case, may well be questioned, I deem it proper to state that the decision of the Secretary is, in my judgment, sound, and should be regarded as conclusive.

FRANKLIN PIERCE.

You will be pleased to have the final Executive determination of the question, communicated to the State authorities.

R. M'CLELLAND, Secretary.

TITLE VIII.

Railroad Selections.

SYNOPSIS OF RULES ADOPTED BY THE GENERAL LAND OFFICE, FOR THE RAILROAD DESK.

[First. By the Act of 4th September, 1841, (No. 48,) "no sections of lands reserved to the United States, alternate to other sections granted to any of the States, for the construction of any canal, railroad, or other public improvement," are subject to the operations of said act. But—

The Chicago and Rock Island Railroad Company and Railroad Bridge Company, cannot lawfully enter upon and use, for the purpose of a road, or for any other object, the military reservation of Rock Island, under pretence of authority from the State of Iowa.—(Opinion of Attorney-General, August 21, 1854, vol. 6, p. 670.)

Railroad Grants.

In reference to the "northerly line" of railroad from Fon-du-lac to the State line in Wisconsin, for which lands were granted by the Act of 3d June, 1856, it has been decided that "northerly" means as near north as practicable, and does not admit of deflections from the meridian, only in case of any insuperable natural obstacle, and in that view the entire line must not deflect in its general course on account of such natural impediment, and then only not exceeding more than half a point or five or six degrees east or west of the points of intersection of the meridian of Fon-du-lac with the State line, which division has met the approval of the Department.—(Report of chief clerk of General Land Office for July, 1856.)

Pre-emption Claims on Lands Reserved for Railroads.

The Commissioner of the General Land Office, has made the subjoined decision:—

"1. Pre-emption claims upon any lands withdrawn from market for railroad purposes, where the settlements were made in good faith with the Government before the passage of the law making the grant, and prior to the definite location or surveying and staking off of the route of the road, are subject to consummation within the period fixed by law for proving up and entering offered and unoffered lands at one ordinary minimum of \$1 25 per acre, and payment may be made in specie or with military bounty-land warrants.

"2. After the survey and staking off of any route, the pre-emption right ceases on the railroad sections; but from and after that date, the *United States reserved sections*, within the six-mile limits of the route, are pre-emptible at a minimum of \$2 50 per acre, till the date of final settlement of the alternate sections to which the railroad is entitled.

"3. From the date of the *final allotment aforesaid*, till the date of *offering the United States reserved sections* at public sale, pre-emption rights to lands in such sections cannot attach; but *after* the offering, the reserved sections again become pre-emptible at a minimum of \$2 50 per acre.

"4. When the \$2 50 minimum attaches, bounty-land warrants, under the Act of 3d March, 1855, cannot be used in part payment, there being an express inhibition of such use in the statute; but warrants issued under prior acts of Congress may be so used—one warrant only to be laid on a single pre-emption claim, at the rate of \$1 25 per acre, and the balance required to make up the \$2 50 to be paid in specie."

Pre-emption in Florida.

If a party settled prior to the survey of the portion of the railroad route including his claim, and he presents a good claim or right by full compliance with law, he has a right to the land at the graduation price.—(Commissioner's letter to the Register and Receiver, Newnansville, Florida, September 18, 1857.)

Secondly. The Act of 3d March, 1853, (No. 222,) and Act of 27th March, 1854, (No. 234,) materially modify the restrictive or interdictive clause in the Act of 1841. The Act of 3d March, 1853, steps in and partly takes off the inhibition contemplated in Act of 1841, by extending the pre-emption laws, at a price of \$2 50 per acre, "over the alternate reserved sections of public lands along the lines of the railroads of the United States," *where the party had settled and improved the land* "prior to the *final allotment* of the alternate sections to such railroads, by the General Land Office."

Pre-emptions under this Act of 1853, attach within the following periods, to the *United States reserved sections* :—

1. From the date of the "definite location" of the road, (viz: according to Attorney-General's opinion, February 16, 1857,) *when the route is surveyed and staked off on the ground*, until the "final allotment," by the General Land Office, of the railroad sections, and that is the *date of official list* certifying the latter sections to the State.

We take the "definite location" of the route, as the period when this Act of 1853, with its \$2 50 price applies, for the reason, not only that such seems to be the current of official decisions, but because, up to such "definite location" there really are no United States alternate sections so set apart, as would be notice, or grounds of inquiry to purchasers.

2. Pre-emptions will not attach under this law, to the *United States alternate reserved sections*, after the date of "final allotment," to the day of offering at public sale, for the reason that the interdicting clause in the Act of 1841, *again applies* to the United States alternate reserved sections aforesaid, the Act of 1853 only taking it off up to the period of "final allotment."

3. Pre-emptions will attach at \$2 50 per acre, to the United States alternate sections, *after they have been offered at public sale*, under decision in letter to Register and Receiver, at Dixon, Illinois, October 19, 1852.

Thirdly. The Act of 27th March, 1854, makes no discrimination between the *United States alternate reserved sections* and the *railroad sections*, but takes cognizance of, and awards the pre-emption privilege to actual settlers, who may be found upon either or both sections, when *their settlements* were made *before* the withdrawal of the lands for railroad purposes, and that, too, at \$1 25 per acre, for it declares, "that every settler on public lands withdrawn for railroads, and who had settled thereon prior to such withdrawal, shall be entitled to pre-emption, at the ordinary minimum, to lands settled on and cultivated by them."* It is also held, that there is no limitation of the length of time during which settlers had occupied such lands, previous to the withdrawal thereof for railroad purposes, to entitle them to the benefits of this act.

Fourthly. By the terms of the Acts of 3d March, 1853, and 27th March, 1854, it is necessary for each class of settlers contemplated in said act, to prove up and pay for the lands settled on *prior to the offering of the United States reserved sections* at public sale; otherwise, any claim based on such settlement will be invalid, and will be no impediment to the offering of lands so settled on, under proclamation. Where pre-emptions exist on lands that *had been offered* between six and fifteen mile limits, they must be proved up before their restoration to market.

Fifthly. The laws and decisions aforesaid, fixing the price of reserved

* Where the lands *outside* of six mile limits had graduated in price before the withdrawal, the graduation price of that date applies, under Act of 27th March, 1854. See Circular, October 30, 1854, and Act 3d March, 1855. (No. 277.)

sections at \$2 50, *after* the surveying and staking off of the routes, and up to the date of "final allotment," and again after public sale, apply only to lands *within the six mile limits*. *Outside* of the six mile limits, the United States sections are subject to pre-emption under the same conditions of *time*, but at \$1 25 per acre.

Sixthly. The pre-emption privilege of the Graduation Act of 4th August, 1854, does not extend to any lands within the six mile limits, reserved for railroad purposes, there being an express interdict in that law, so far as those lands are concerned. The public lands outside the six mile limits, and within the fifteen mile limits, when released and restored to market, take their position on the same footing as other public lands, and if they have graduated in price, are, of course, liable to be sold at the proper graduation, or to be pre-empted. *But from the date of withdrawal up to such restoration*, lands are not subject to graduation entry. The act granting land for railroad purposes, removes the land withdrawn in pursuance thereof, from the operation of the Act of 4th August, 1854, (No. 251.)]

No. 550.

GENERAL LAND OFFICE,
March 19, 1858.

Gentlemen:—I have received the letter of the Register, of 3d inst., asking instructions relative to pre-emptions along the route of the "Minnesota and Pacific railroad, and in compliance with his request, I have to communicate to you the following general rules.

1st. Pre-emption claims upon *any lands* withdrawn for railroad purposes, where the settlements were made in good faith, before the passage of the law making the grant, may be proved up and consummated under the general pre-emption laws, (or under the special Act of 27th March, 1854, (No. 234,) where declaratory statements were not filed in time,) at \$1 25 per acre.

2d. Where the settlements were made *after* the withdrawal of the lands for railroad purposes, where such withdrawal is conditional, and *prior* to the definite location of the route, by surveying and staking off the same on the face of the earth, claims made thereby upon either even or odd sections, are subject to consummation within the period fixed by law, for proving up and entering offered and unoffered lands, at the ordinary minimum.

3d. After the surveying, marking and staking off of any route, the pre-emption right ceases on the railroad sections, within the six mile limits of the road, but from and after that date, the *United States reserved* sections within said limits are subject to pre-emption at a minimum of \$2 50, per acre, until the date of the "final allotment" by the General Land Office of the actual railroad sections to the State or Territory.

4th. From the date of the final allotment, till the date of offering the United States reserved sections, within six mile limits, at public sale, pre-emption rights to lands in such sections cannot attach by virtue of settlement, made after such "allotment," but *after the offering* aforesaid, the United States reserved sections again become pre-emptible at a minimum of \$2 50 per acre.

5th. Pre-emption claims upon either even or odd sections, outside of the six mile and within the fifteen mile limits, based upon settlements made *prior* to the selection of alternate sections in that tier, by the Agent of the State or Territory, in pursuance of the 1st section of the Act of 3d March,

1857, are valid, and may be proved up in the manner specified in rule second, hereinbefore written.

6th. After the selection aforesaid, and an official notification thereof to the Register and Receiver by the State or Territorial agent, the right of pre-emption settlement ceases upon the section so selected, and the alternate sections in that tier, remaining to the Government, continue pre-emptible on a footing with other bodies of lands not affected by railroad grants, *except** in cases (not applicable to Minnesota,) where the lands had graduated in price, before the withdrawal, and in such cases they are not pre-emptible at the graduation price until restored to market.

The foregoing rules, it is understood are not applicable, and do not give any rights to claimants who may have made settlements on the bodies of land within six or fifteen mile limits of railroad routes in Minnesota, during the period of four months absolute withdrawal, in pursuance of the instructions contained in my Circular letter of 22d June, 1857.

Very respectfully, &c.,

THOS. A. HENDRICKS,
Commissioner.

Register and Receiver, Stillwater, Minnesota Territory.

No. 551.

Iowa Railroad Grants.

The grants of public lands to the State of Iowa, for Railroad purposes, by the Act of May 15, 1856, (No. 288,) are conditional grants in præ-senti, in the nature of a float, which do not attach to any particular parcel of the public lands, until the necessary determinative lines of railroad shall have been definitely fixed.

ATTORNEY-GENERAL'S OFFICE,
December 19, 1856.

Sir:—Your communication of the 18th of October, referring me to the Act of Congress of May 15, 1856, (No. 288,) granting lands to the State of Iowa, for railroad purposes, submits thereon the single question, “whether the said Act is a grant *in præ-senti* of the alternate sections within the six miles’ limits of the several roads; or, whether such grant does not await the period when the lines or routes of said roads are definitely fixed, before it attaches to any particular land?”

The material parts of the Act referred to, are as follows:—“That there be, and is hereby granted to the State of Iowa, for the purpose of aiding in the construction of railroads, every alternate section of land, designated by odd numbers, for six sections in width on each side of said roads. But in case it shall appear that the United States have, when the lines or routes of said roads are definitely fixed, sold any section, or any part thereof, granted as aforesaid, or that the right of pre-emption has attached to the same, then it shall be lawful for the agent or agents, to be appointed by

* This exception has been overruled. The Commissioner holds that the lands outside of the six mile limits of a railroad route, are not affected *in price* by the land grant, up to the date of selection by the State Agent of alternate sections in the nine mile tier; all lands in such tier are subject to sale at the price which attached at the date of withdrawal, and after such selection, the sections remaining to the United States in such tier, continue subject to sale, as before, and not until their restoration to market will they graduate again, if they had graduated at the date of withdrawal.

the Governor of said State, to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tiers of sections above specified, so much land, in alternate sections or parts of sections, as shall be equal to such lands as the United States have sold or otherwise appropriated, or to which the rights of pre-emption have attached as aforesaid; which lands, (thus selected in lieu of those sold and to which pre-emption rights have attached as aforesaid, together with the sections and parts of sections, designated by odd numbers as aforesaid, and appropriated as aforesaid,) shall be held by the State of Iowa for the use and purpose aforesaid: *Provided*, that the land to be so located, shall, in no case, be further than fifteen miles from the lines of the said roads, and selected for and on account of each of said roads: *Provided further*, that the lands hereby granted for and on account of said roads severally, shall be exclusively applied in the construction of that road for and on account of which such lands are hereby granted, and shall be disposed of as the work progresses, and the same shall be applied to no other purpose whatever." 11 Stats. at Large, p. 9.

Upon the most attentive consideration of this Act in all its parts, it has proved impossible for me to entertain a doubt as to its true legal effect.

The Act declares, that "there be, and hereby is, granted to the State of Iowa," for certain purposes, certain portions of the public domain within said State, not yet made positive in location, but capable of being so rendered on the happening of particular future events mentioned.

But the grant was not merely subject to future events for the determination of the specific section of land to which it would attach; it was also subject not to vest at all, or to be divested, according to future events; for the State of Iowa might not accept, or might fail to execute conditions annexed to the grant; such, for instance, as the primary one of entering upon the construction of the contemplated roads.

If the Act stopped here, there would be nothing in it to constitute, on the day of its enactment, an actual severance of certain sections from the public domain, or transfer to the State of Iowa of a vested interest in the same.

It is not a grant of lands by their character like the grant of swamp lands to a State, or the grant of specific sections of riparian land fixed at the time by the course of a river. Instead of this, it is a grant on the line of unlocated railroads. To assume that in such a case the grant vests at once, would deprive the general proprietor of the use of his land, not only within six sections of a line certain, but anywhere and everywhere within any possible line. Such an effect is not to be presumed. To be conceded, it must be expressly enacted. But the Act does not leave the question here; it proceeds implicitly to negative the supposed effect. It contemplates that the United States shall retain power to convey, within all the possible limits of the grant, either by ordinary sale, or on pre-emption, up to the time "when the lines or routes of said roads are definitely fixed;" and provides for the case by granting, contingently, substituted lands beyond the original limits.

In my opinion, therefore, the act by its text, makes a conditional grant *in presenti*, in the nature of a *float*, and which does not attach to any particular parcel of the public lands until the necessary determinative lines shall have been fixed on the face of the earth.

I think all the precedents, in the action of the Government, as applied to previous grants in the same or similar terms, tend to confirm this conclusion; for, in the analogous cases, the contingent strips of public domain, subject to such future railroad location, were withdrawn from private entry

by proclamation of the President; thus implying that without such withdrawal private entries would go on as usual; and the power of the President to make such withdrawal, as the means, and the only means, of preventing anticipatory private appropriations in the case of railroad grants to States, has been recognized by a recent act of Congress. (Act of March 27, 1854; 10 Stats. at Large, p. 269. See No. 234.)

There is, it is true, in previous cases, some conflict of precedents as to the time when the right of pre-emption shall cease under such circumstances. In some cases the right of pre-emption has, by the tenor of the proclamation, or its construction, ceased on the withdrawal of the lands from private entry, and in some it has not: and there is much discussion in the papers before me on the question of the power of the President to discriminate, and to leave a private appropriation to continue in the form of pre-emption, while forbidding it in other forms. But that question you have not referred to me: it bears on the question actually submitted only in the subordinate relation of consequences; and there is in the text of the act, according to my appreciation of it, no such obscurity of import as to require or admit of elucidation from the consideration of incidental consequences. I am, therefore, not called on to tax my thoughts with that particular incident of the subject. And it is of course unnecessary to discuss here the very grave matters of expediency involved in the alternatives of the total or partial suspension of the purchase and sale of lands, which are within the range of unlocated railroad grants to States.

I am, very respectfully,

C. CUSHING.

Hon. Robert M'Clelland, Secretary of the Interior.

No. 552.

Grant of land to Illinois for a railroad.

A survey, by which the Chicago branch of the railroad from Chicago to Mobile, was to diverge from the main track, at a point not north of the parallel of thirty-nine and a-half degrees, north latitude, is in accordance with the Act of 20th September, 1850.

The United States granted to Illinois, by Act of 20th September, 1850, in aid of the railroad from Chicago to Mobile, every alternate section of land, designated by even numbers, of six sections in width, on each side of said road and branches; but the claim to six sections for every linear mile of the road and its branches, including all its sinuosities and deflections from a straight line, is not tenable.

ATTORNEY-GENERAL'S OFFICE.

March 10, 1852.

Sir:—I have had the honor to receive your letter of the 9th instant, referring to my opinion certain questions which have arisen in your Department, in relation to the proper construction of the Act of Congress of the 20th of September, 1850, entitled "An act granting the right of way, and making a grant of land to the States of Illinois, Mississippi and Alabama, in aid of the construction of a railroad from Chicago to Mobile." (No. 178.)

The first section of the act provides, "that the right of way through the public lands be, and the same is hereby, granted to the State of Illinois, for the construction of a railroad from the southern terminus of the

Illinois and Michigan canal, to a point at or near the juncture of the Ohio and Mississippi rivers, with a branch of the same to Chicago, on Lake Michigan; and another, via the town of Galena, in said State, to Dubuque, in the State of Iowa," &c.

The same section further provides, "that a copy of the survey of said road and branches, made under the direction of the legislature, shall be forwarded to the proper local land offices, respectively, and to the General Land Office at Washington," &c.

A survey was accordingly made of said road and branches, under the direction of the Legislature of Illinois, which required that the Chicago branch of the road should diverge "from the main track at a point not north of the parallel of thirty-nine and a-half degrees north latitude," &c.

That survey is understood to have been forwarded to the several land offices, as required by the act; and a copy of it, transmitted to you, is now before me. Upon this state of the case, the first question arises, which you propose to me in the following terms, namely: "Whether that location of the road and branches, (exhibited on the said plat of survey,) is in accordance with the law granting the right of way?"

My opinion is, that it is in full accordance with that law.

The only ground of objection, or question which has been suggested on this point, is, that the branch to Chicago diverges from the main road at a place too remote from that city, thereby giving to the State of Illinois a claim, under the second section of the act, to a greater quantity of land than was intended.

This objection can avail nothing. The act of Congress does not prescribe at what point or distance from Chicago, the branch to that place should diverge from the main track or road; that was left to the judgment and selection of the grantee—the State of Illinois; and she has determined it beyond all further question, by her location and survey of the road. That location of the Chicago branch does not conflict with the Act of Congress; and it is in conformity with the act of the Legislature of Illinois, giving directions for the survey.

It seems to me, therefore, that the objection is altogether unfounded; and that the main road and its branches, as exhibited by the diagram aforesaid, are located according to law.

Your next question respects the quantity of land to which the State of Illinois is entitled, under said act, to aid in the construction of said road and branches.

By its second section it is enacted, "that there be and is hereby granted to the State of Illinois, for the purpose of aiding in making the railroad and branches aforesaid, every alternate section of land, designated by even numbers, for six sections in width, on each side of said road and branches; but in case it shall appear that the United States have, when the line or route of said road and branches is definitely fixed by the authority aforesaid, sold any part of any section hereby granted, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents, to be appointed by the Governor of said State, to select," &c., "in equal quantity, from the lands of the United States most contiguous," &c.

You inform me, that, in virtue of this section of the act, "the State of Illinois claims a quantity of land equal to the one-half of six sections in width, on each side of said road and its branches, or three thousand eight hundred and forty acres for every linear mile of the road and its branches, including all its sinuosities and deflections from a straight line." You add the expression of your own "doubt, whether the claim to that extent is tenable," and you desire, as I understand you, my opinion on that point.

It is quite clear, in my judgment, that the claim to that extent is not tenable, and cannot, according to law, be allowed. It is a theory, rather than a claim; and has nothing to sustain it in either the intention or language of the act. The imaginary straightening out of crooked lines to furnish a longer base, and thereby to increase the quantity of land to the grantee, is at apparent variance with the plain purpose and words of congress. The statute had reference alone to the actual road as made or located, with all its sinuosities. The line which that forms, is the base line of the land granted on each side of it, and is the object and measure by which its locality and quantity are to be ascertained and determined. And for so much of the land, included in the grant thus defined, as shall appear to have been previously appropriated by pre-emptions, or purchasers from the United States, the grantee, namely, the State of Illinois, is entitled to an equal quantity elsewhere, as provided for in said act.

This answer embraces, I believe, all the questions which you have been pleased to submit to me, on this subject; and I have only to add that I am,

Very respectfully, yours, &c.,

J. J. CRITTENDEN.

Hon. Alexander H. H. Stuart, Secretary of the Interior.

No. 553.

Grant of lands to Illinois, Mississippi, &c.

The Act of 20th September, 1850, granting the right of way and land to the States of Illinois, Mississippi and Alabama, in aid of a railroad from Chicago to Mobile, does not grant a right of way through the States of Kentucky and Tennessee.

No part of the sections within the Chickasaw country can be claimed by Mississippi under the grant, but an equivalent is allowable.

ATTORNEY-GENERAL'S OFFICE,
August 7, 1852.

Sir:—The questions in your letter of 29th July, arising out of the Act of 20th September, 1850, (No. 178,) entitled "An act granting the right of way and making a grant of land to the States of Illinois, Mississippi and Alabama, in aid of the construction of a railroad from Chicago to Mobile," have been duly considered.

The first section of this statute enacts, "That the right of way through the public lands be granted to the State of Illinois for the construction of a railroad from the southern terminus of the Illinois and Michigan canal to a point at or near the junction of the Ohio and Mississippi rivers, with a branch of the same to Chicago, * * * * * and another via the town of Galena, in said State, to Dubuque, in the State of Iowa, with the right also to take the necessary materials of earth, stone and timber, &c., for the construction thereof; provided that the right of way shall not exceed one hundred feet on each side of the length thereof, and a copy of the survey of said road and branches, made under the direction of the legislature, shall be forwarded to the proper local land offices respectively, and to the General Land Office at Washington City, in ninety days after the completion of the same."

Section 2d, grants to the State of Illinois, for the purpose of aiding in making the railroad and branches thereof, within the State, every alternate section of land designated by even numbers, for six sections in width on

each side of said road and branches; but, "in case it shall appear that the United States have when the line or route of the road and branches is definitely fixed by the authority aforesaid, sold any part of any section hereby granted, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents to be appointed by the Governor of said State, to select, subject to the approval aforesaid, from the lands of the United States most contiguous to the tier of sections above specified, so much land in alternate sections or parts of sections as shall be equal to such lands as the United States have sold, or to which the right of pre-emption has attached, which lands, equal to one half of six sections in width on each side of said road and branches, the State of Illinois shall have and hold to and for the use and purpose aforesaid. *Provided*, that the lands to be so located shall, in no case, be further than fifteen miles from the line of the road, &c., to be disposed of only as the work progresses," &c.

Section 3d relates to the sections retained by the United States within six miles on each side of the road, not to be sold by the United States for less than \$2 50 per acre.

Section 4th provides "That the said lands, hereby granted to the said State, shall be subject to the disposal of the legislature thereof for the purpose aforesaid, and no other." The road and branches to be for the use of the United States, free from toll or charge upon the transportation of troops or property.

Section 5th requires the road to be completed in ten years, otherwise the State of Illinois to pay to the United States the amount received for sale of the lands, and that unsold to revert to the United States.

Section 6th provides for the transportation of the mail at such price as Congress shall direct.

These six sections relate solely to the State of Illinois, the roads within the territorial limits of Illinois to the lands granted, and lying within the limits of that State, without any community of rights or interests of the State of Illinois with any other of the several States.

The 7th section enacts, "That in order to aid in the continuation of said central railroad from the mouth of the Ohio river to the city of Mobile, all rights, privileges and liabilities, hereinbefore conferred on the State of Illinois, shall be granted to the States of Alabama and Mississippi respectively," &c.

You state that under the seventh section of the statute, the States of Alabama and Mississippi claim a quantity of land equal to the one-half of six sections in width on each side of said road, throughout its entire length, from Mobile to the Ohio river, to be taken wherever found in those States, within fifteen miles on each side of the road.

"That the route of the road passes through the western part of the State of Kentucky, and that portion of the State of Tennessee which formerly belonged to the United States. It also passed through that portion of the State of Mississippi which embraces the Chickasaw cession. The grounds upon which the present claim rests, are stated in the accompanying argument of a number of representatives in congress from the several States named, and certain letters which accompany it."

Whereupon you ask my opinion upon two questions: First, "As to the extent of the grant to which the claim can be properly allowed; whether for the entire length of the road from Mobile to the Ohio river:" Second, "Or if not, whether it can be recognized for those portions of the road which pass through the State of Tennessee and the Chickasaw cession in Mississippi, or either of them?"

The seventh section of the statute contains a several grant to the State of Alabama, and a several grant to the State of Mississippi, not a grant jointly to the two. The word "respectively" makes the severalty, without doubt.

The statute, with its seven sections, is, in meaning, spirit and effect, the same as if three several and distinct grants had been made by the three separate and distinct statutes, the one to the State of Illinois, the second to the State of Alabama, and the third to the State of Mississippi, with the restrictions, conditions, limitations, forfeitures and privileges expressed in the first six sections. The meaning and intention of the legislature, as contained in the seven sections of the act, will be expressed and clearly understood by taking the first six sections containing the grants to the State of Illinois, and applying them, *mutatis mutandis*, first, to the State of Alabama, and then to the State of Mississippi, so as to make three distinct statutes, one in favor of Illinois, another in favor of Alabama, and the third in favor of Mississippi.

The grant to the State of Alabama is of the right of way over the public lands in that State, and of the sections of lands on each side of the railroad in that State; the grant to the State of Mississippi is of the right of way over the public lands in that State, and of the sections of land on each side of the railroad in that State, according to description of sections of land contained in the second section, subject to the provisos and conditions of the several sections of the statute.

The claim to the quantity of land, equal to the one-half of six sections in width on each side of the road, in its whole length from Mobile to the Ohio river, seems to be inadmissible. It supposes a joint grant and a joint property in the lands granted to the States of Alabama and Mississippi. Such a construction would run into perplexed and unreasonable consequences.

Under such hypothesis, which of the two States is to survey and lay out the road and fix its location definitely? Which is required by the first section of the act to be "made under the direction of the legislature?" Shall the Legislature of Alabama, or the Legislature of Mississippi, have the direction? Which of the two States is to appoint the agent required by the second section to select the lands in lieu of the sections sold by the United States, or subject to the right of pre-emption, the Governor of the State of Alabama, or the Governor of the State of Mississippi?

The fourth section provides that the lands granted to aid the construction of the railroad shall be "subject to the disposal of the legislature thereof, for the purpose aforesaid, and no other." Which of the States is to dispose of the land? Or, if some by one State, and some by the other, by what standard is the portion to Alabama and the portion to Mississippi to be assured?

By the fifth section, if the railroad shall not be completed within ten years, the amount of sales of the lands is to be paid to the United States, and the unsold lands shall re-invest in the United States. Suppose one State completes the road so far as the part is under her direction and control, and the other State fails to complete the part under her direction, what then? How much is to be refunded of the money received for sales? And are both liable, or only one, and which one?

Although the railroad must pass through the States of Kentucky and Tennessee, in its course from the city of Mobile to the mouth of the Ohio river, the statute has not mentioned either of those States, and there is no indication of any intention on the part of the Congress of the United States, to grant to the States of Alabama and Mississippi, or to either, a right of

way through the States of Kentucky and Tennessee, or a right to survey and locate definitely a road through them ; nor to give to the legislature of Alabama an authority to survey and locate, construct and superintend, a road through the territory of the State of Mississippi ; nor to the State of Mississippi an authority to survey, locate, construct and superintend a road through the territory of the State of Alabama. The mere description given in the statute, of the contemplated Central Railroad, from the mouth of the Ohio river to the city of Mobile, confers no such powers or rights to the one State to operate within the territorial limits of any other State ; no such confusion of jurisdiction is intimated by anything contained in the statute. In all these particulars, the States through which the road shall pass, are left free to adopt such measures as they may respectively think proper, and make all such arrangements as may be necessary for their mutual convenience and co-operation.

The whole length of the railroad, through and within the State of Alabama, when actually surveyed and definitely located within that State, under the direction of the legislature thereof, must determine, and limit, and define the extent of the grant to that State.

And so likewise, the whole extent of the railroad within the State of Mississippi, as surveyed and definitely fixed under the direction of the legislature thereof, must determine, limit and define the extent of the grant to that State.

2d. As to the lands in the Chickasaw country, within the State of Mississippi, the Indian title was surrendered and ceded to the United States, by the treaty of Washington, made on 24th of May, 1834, between the United States and the Chickasaw nation of Indians. 8 Stats. at Large, p. 450 to 462 ; Brown's ed., vol. 9, p. 1266.

The Indians had but the right of occupancy ; the ultimate right was in the United States, with the pre-emptive and sole right to purchase the Indian title. By the treaty of Washington, and cession by the Chickasaw nation of the right of occupancy, the right of possession and the actual possession, and the ultimate right and title to the lands, became united and vested in the United States. By the treaty, the government of the United States is bound to lay off the Chickasaw country into sections, &c., and to sell, for the best price that can be had, those lands, and to apply the proceeds to the use and benefit of the Chickasaws. Sales have been made by the United States from time to time ; and the whole of that country, if not already sold, must be sold by the United States. The title has been, or must be, conveyed by the United States to the purchasers. No part of these sections, within what was called the Chickasaw country, (as defined by the treaty of 1834,) can be held by the State of Mississippi, under the grant of 20th September, 1850. But I think that a liberal and equitable construction of that legislative grant, may entitle the state of Mississippi to claim an equivalent for all the sections in the Chickasaw country, falling within the description of "every alternate section of land designated by even numbers, for six sections in width on each side of said road," as definitely located and within the State of Mississippi : "such equivalent to be taken by selecting an equal quantity from the lands of the United States, most contiguous to the tier of sections above specified," as pointed out and directed in the second section of said Act, and according to the rule expressed in my opinion of the 10th of March last, relative to the grant to the State of Illinois.

Considering the liberal spirit in which the Act of Congress was enacted, the public benefit and great utility of this railroad, if completed, and having great respect for the representatives in congress, whose argument you

refer to, I was inclined to accede to the claim contended for by them, as far as a sense of duty and the most favorable construction of the Act would enable me ; but I have found myself constrained to adopt adverse views and conclusions on the subject. The constructions that would alone support that claim, seem to me to be not only arbitrary, but, in several respects, irreconcilable with the intent and plain meaning of the Act.

The words, "in proportion to the length of the road," must be understood in reference to "the length of the road" in the respective States of Alabama and Mississippi.

That was the measure of the grant to Illinois, and the 7th section is express, that the same "rights, privileges," &c., granted to Illinois, were those alone intended to be granted to Alabama and Mississippi. To give to those words a different construction ; to understand them as embracing the entire line from Mobile to the Ohio river, would lead to inexplicable difficulties, and to consequences irreconcilable with plain provisions of the Act.

But, Sir, I will pursue the subject no further. What I have said will be sufficient to enable you to understand my views and opinions on the subject of your inquiries.

I have the honor to be, very respectfully, yours, &c.,

J. J. CRITTENDEN.

Hon. A. H. H. Stuart, Secretary of the Interior.

No. 554.

It is determined to decline to withdraw lands from market for Railroad purposes, until after grant by Congress.

DEPARTMENT OF THE INTERIOR,
August 29, 1854.

Sir :—It has been determined with the approbation of the President, after due consideration on the subject, to bring again into market the lands heretofore reserved for railroad purposes, in all cases, where grants had not been made at the close of the late session of Congress, and to decline in future to withdraw lands for such purposes, until after the necessary grant shall have been actually made.

R. M'CLELLAND, Secretary.

Commissioner of the General Land Office.

No. 555.

Land in Missouri shown not to be swamp though claimed as such, confirmed as a Railroad selection.

DEPARTMENT OF THE INTERIOR,
October 25, 1855.

Your letter of the 3d inst., complaining of the action had in relation to certain tracts selected by you in Macon County, Missouri, as swamp land, was received and referred to the General Land Office for report.

It appears therefrom that the title of the land in question, was contested by the Hannibal and St. Joseph's Railroad ; that due notice was given to both parties, and that they respectively appeared before the Surveyor-Gen-

ral at St. Louis; that the book of Diagrams referred to in your letter, formed a part of the evidence in the case, and that the tracts rejected as swamp land were determined not to be swamp land by the Surveyor-General, he stating "that he had no hesitation, because of my personal knowledge of the country, and of the character of the testimony. The field notes, too, sustain the company;" that upon the examination of the report of the Surveyor-General and the testimony accompanying it, the Commissioner of the General Land Office confirmed the conclusions to which the Surveyor-General had arrived, and upon his recommendation, the Department rejected the said swamp land selections, and approved them to the railroad company.

R. M'CLELLAND, Secretary.

A. L. Gilstrap, Bloomington, Missouri.

No. 556.

The Swamp grant of September 28, 1850, did not embrace lands in Illinois, which were included in the Railroad grant of 20th September, 1850.

DEPARTMENT OF THE INTERIOR,
November 20, 1855.

I herewith return the papers in relation to the swamp and overflowed lands in Illinois, which accompanied your report of the 16th ult., on the points involved, in a communication from the Governor of that State, of the 28th September last, and an argument subsequently filed by Judge Seates, the agent appointed by the Governor. On the passage of the Act of 20th September, 1850, (No. 178,) making a grant for the Mobile and Chicago railroad, a reservation was made by order of the President, at its date, of a quantity of land fifteen miles in width on each side of the line of said road in Illinois, according to the locality then assigned to it, and which was very near that which it was shown ultimately to have assumed; that the object of said reservation was to preclude any further sale or disposition after the 20th September, aforesaid, 1st, of any lands within the six mile limits of said road, because of the grant to the State of the odd sections therein, and the enhanced minimum of the even sections therein, and which by the long established usages of the Department was required to be offered at public sale, before subject to entry at such advanced price, and 2d, of any land in the *alternate sections*, without the six and within the fifteen mile limits, which were granted to the State, to the extent of the aggregate deficiencies in the alternates within, between the full contents of the latter alternates and the quantity vacant at the date of the grant.

The State, through its proper agents, made the selections without the six mile limits, and the whole grant, (with the exception of trifling balances arising from mistakes and confusions,) was adjusted and certified on the 13th March, 1852, and subsequently, in July, August and September, 1852, the land within the six mile limits was offered at public sale, under a proclamation of the President, dated 3d April, 1852, it directing that after the public sale, at each respective land office, the land without the six mile and within the fifteen mile limits, should be restored to market, (except as to two of the said offices in which no double minimum lands existed, and in relation to that within the fifteen mile limits, specific periods were given as to their restoration,) and the sales of this double minimum land, under the proclamation and since, have been patented, and the patents delivered to the purchasers. On the 28th September, 1850, Congress

passed the Swamp Land Act, (No. 182,) so called, and, under it, certain instructions were issued for carrying it into effect, embracing substantially these propositions, that where the field-notes of survey indicated the swampy character of the land, they were to be regarded as conclusive of such character, and that where the land is claimed by the State as such, it shall be by selections made by duly authorized agents of the State, and accompanied by their affidavits that they have examined the said land, and being acquainted with the mode of surveying the public land, that the greater part of each forty acre tract included in such selections is swampy, and of the character contemplated by the act.

Many of these selections, not only in Illinois, but elsewhere, were alleged to be good arable land, and applications for the purchase thereof were made, as for the land of the United States, and to which the States respectively had no valid claims under the Swamp Land Act, and from facts brought to the knowledge of the General Land Office, a rule obtained to allow parties to apply for land under these circumstances, and if after examination into the question of fact, after notice to the agent of the State, it was satisfactorily shown that the averment of the applicant was true, he was allowed to purchase the same, and the tract or tracts were stricken from the list of selections, and the same excluded from the list and plat directed by the act to be made out by the Secretary of the Interior, and which list was to be the basis of the perfect grant by a patent to the State, rendered necessary by the law to divest the United States of the fee simple title. Much effort was made from time to time to hasten the selections by the various States of the swamp land, without avail. Without closing each land office and stopping all the operations thereof, until the swamp land selections were all made and reported, the Department was compelled to suffer ordinary entries and locations to progress, with no other security against confictions than would seem from the fact, that purchasers were aware that land really swamp was not subject to legal sale or location. Before the receipt of any selections from Illinois (the first list of selections embracing land in the Kaskaskia District having been mailed by the Surveyor General of Illinois and Missouri on the 10th October, 1853,) many sales and locations had been made, conflicting with lands subsequently reported as swamp land. These confictions in the various States had become so numerous, and involved interests to such an extent, that Congress on the 2d March, 1855, passed an act directing the President to issue patents on all such sales and locations, to pay the State the money received by the Government from the lands sold, and to allow it to locate other land in lieu of that taken by military warrants and scrip whenever the Commissioner of the General Land Office should decide, (upon proof to be submitted to him,) and the Secretary of the Interior should confirm the decision, that the land so patented was of the character contemplated to have been embraced by the Swamp Land Act. Under this state of facts, the State of Illinois claims all the unsold swamp land, on the 28th September, 1850, within the double minimum sections, notwithstanding its reservation by the President on the 20th September, for the purposes of the act of the latter date; all the unsold swamp land without the six and within the fifteen mile limits, notwithstanding the grant of the alternate sections therein, in whole or in part, by the previous Act of the 20th September, aforesaid, and its reservation by the President for the satisfaction of that grant, and she now, not only prefers this claim for *the land*, notwithstanding the Act of 2d March, 1855, (No. 275,) (except where her grantees, the several counties in the State, may elect to take the money, or other land,) but she insists that the extent and character of her claim shall be determined

by the lists she has furnished in accordance with the instructions to the advisory agents of the Secretary of the Interior, notwithstanding all or any allegations of fraud or illegality in said selections; and she also objects to the mode which has been and is being practised, in regard to the lands so selected, by permitting application therefor by others, and citing her agents at various times and places to defend such selections by additional proof as to their validity. I have examined the whole subject with much care, and perused the various arguments in behalf of the State, and of other interests involved, and I am constrained to arrive at the conclusions that the State had no right under Act of 28th September, 1850, to any of the land within the six mile limits, which had been reserved by the President under Act of 20th September, 1850, for the special purposes of that act, to wit, the reimbursement to Government for the granted lands.

The practice of the Government, from the earliest period, was, to re-offer at public sale enhanced minimum lands before they could be disposed of at all, and the ordinary entry at private sale, the attachment of pre-emption, and every other mode of disposition under prior laws, having as wide a scope, as to lands of the United States, as the Swamp Land Act, terminated with the law of 20th September, 1850, and the reservation by the President, with a view to the execution of the specific purposes and obvious design of the latter act. The concurrence in this view, of the force and effect of this and other acts, is shown by all the legislation of Congress on the subject of these double minimum and reserved lands; special legislation having been necessary from time to time, with a view of embracing them within the pre-emption privilege, and rendering them liable to location by military warrants; and the offering them at public sale, after ninety days' public notice, through a proclamation of the President, without objection on the part of the State, should preclude her now from setting up title adverse to patentees of the same land, who, by her standing silently by, were encouraged to make such purchases.

That she has no right, under the Swamp Land Act, to the lands within the fifteen mile limits, selected by her own agents, under the grant to her by the prior Railroad Act, and which latter selections have long since been certified to her, and by her disposed of to other parties, in fee. The latter mentioned act was earlier in date; the reservation by the President came in aid of that law, to enable him to separate the granted from the ungranted land, for the purposes of the railroad, and the grant being of the alternate sections, to the extent of the deficiencies arising from the sold portions of the alternates, within the six miles, they were as much the subject of present grant *in place* outside of the six miles as within, to the extent of the said deficiencies, which might or might not absorb the whole, and that it therefore necessarily included what might have been swamp land in such alternate sections. The General Land Office appears to have regarded the fifteen mile limits as merely *withdrawn* from market by the President, for the purpose of ascertaining with due certainty, the granted land under the Act of 20th September, 1850, as it has sanctioned selections within those limits, as swamp land, not interfering with the prior grant, regarding the purposes of the law, under the first act, as accomplished, when the extent of the grant was ascertained, and the actual reservation *under the authority of the law*, in regard to the land therein, as extending only to those tracts necessary to complete the grant for the railroad. With this determination, making both laws harmonize with each other, as far as practicable, and extending the provisions of the latter law to its utmost equitable limits, I have no disposition to interfere, believing that substantial justice has been done to the State under both laws, and even beyond what would have been

accorded under a more rigid exercise of the rule, with regard to reservations. That in regard to the Act of March 2, 1855, its provisions are mandatory, and no selections conflicting with sales or locations with military warrants or scrip, can be approved, listed, and patented to the State, but must be patented to the purchasers or locators, and the purchase-money or other land given to the State, upon her compliance with the terms of that law, and the instructions of the Department, as to the proof of the swampy character of the land embraced in such sales or locations. That the extent and character of her claim is not determined by the selections reported by her agents, wherever I am satisfied that fraud, illegality, or error exists. The law imposes the duty on me, of making accurate lists of this swampy land, and although it is evident that they cannot be done except through the agency of other persons, it was not designed, that, when I had taken the necessary means, in a general way, of arriving at results, my judgment and conscience were to be entirely surrendered, and I be made the mere passive instrument to carry out the acts of those agents to any extent indicated by their compliance with the forms of the instructions given them. I feel bound to withhold my sanction whenever I have good ground to believe that illegal and improper selections have been made, until I am satisfied of the contrary; but convinced by experience that the existing mode of determining those questions of conflict is onerous and oppressive to the States, I think a change is called for, and I have no doubt a plan can be devised, which, while it will protect the public interests, can be made perfectly satisfactory to the States, and bring to an early conclusion the harassing difficulties attending the execution of the Swamp Land Act. Upon this latter point, I should like the expression of your views, (based upon a more thorough knowledge of all the details of your office, with which it may be connected,) either before or after a consultation with the Governor of Illinois on the subject. My present inclination being towards a project which will fix a definite period, beyond which, (except in extensive frauds, or very special cases,) no further objections will be heard; that prior to that time, free access should be had by all, to full information as to what land had been selected; that all objections be made under oath, by persons whose credibility, &c., is fully vouched for; and after the expiration of the time fixed as above, a day be appointed for the hearing of testimony *in all the cases in any one county*, and the determination be final.

Be pleased to convey to the parties interested, the result of this action on the general question, and at as early a period as possible, carry out to completion, the point yet left for future consideration.

R. M'CLELLAND, Secretary.

Commissioner of the General Land Office.

No. 557.

*In relation to the land grants for the Little Rock and Fulton Railroads.
The definite location of the road will locate the grant upon the proper number of even sections.*

ATTORNEY-GENERAL'S OFFICE,
June 7, 1857.

Sir :—The Act of Congress, passed February 9, 1853, (No 216,) gives and grants to the States of Missouri and Arkansas certain lands for the purpose of making a railroad from the mouth of the Ohio, by way of Little Rock, to Fulton, on the Texas line, with branches. This act vests the fee-simple

title in the States to which the lands are given. A legislative grant by Congress does of itself, *proprio vigore*, pass to the grantee all the estate which the United States had in the subject-matter of the grant, except what is expressly excepted. This principle has often been ruled in the courts, as you will see by reference to the following cases. *United States v. Perchman*, 7 Peters, 51; *Mitchell v. United States*, 9 Peters, 711; *United States v. Brooks*, 10 Howard, 442; *Leuener v. Price*, 12 Howard, 59; *Ladiga v. Roland*, 2 Howard, 581; *Godfrey v. Bradley*, 2 M'Lean, 412. The point is firmly settled, if the highest judicial authority can settle anything; and even if there had been no decision of it, I should think it too plain, on original principles, to admit of a doubt. When Congress says that a certain portion of the public domain of the United States "is hereby granted" to a State, what need can there be of any further assurance, in order to give the State a perfect title in fee?

The Act of August 3, 1854, (10 Stats. at Large, p. 346. See No. 249,) most manifestly does not apply in any manner whatever to the lands granted in 1853, to Missouri and Arkansas. That act, (Act of 1854,) prescribes the duty of the Commissioner of the General Land Office, in regard to legislative grants, where the law does not convey the fee-simple title, or require patents to be issued for the lands. The Missouri and Arkansas grants are not of that kind.

The definite location of the road will locate the grant upon the proper number of even sections on each side, with which the United States shall not previously have parted with the title; and the selections of the Governor's agent will determine what sections or parts of sections are to be taken instead of those sold or subject to pre-emption. Then the title to each particular parcel will be as complete as if it had been granted by name, number or description.

The survey required by the first section of the law, will enable you to know what lands are appropriated by the mere location of the route for the railroad, and I presume you will also be informed, in some authentic way, of the choice made by the Governor's agent. I can see no objection to your furnishing lists of those lands to any person who desires to make a proper use of them, just as you would give other information from the records of your department; but such lists can have no influence on the title of the States.

The States of Missouri and Arkansas will hold these lands in trust for certain purposes, and the mode in which the trust shall be executed is prescribed in the act making the grant. What those States can rightfully do with the lands, or what remedy the United States will have, if they do wrong, are not questions for you or me to decide at present.

I have the honor to be,

Very respectfully, yours, &c.,

J. S. BLACK.

Hon. J. Thompson, Secretary of the Interior.

No. 558.

By the Act of 17th May, 1856, separate grants were made to the States of Florida and Alabama. No more land can be selected by either State than is sufficient to satisfy the quantity of the grant to her, which is determined by the actual length of road within her limits.

DEPARTMENT OF THE INTERIOR,
November 7, 1857.

Sir:—After due consideration of the questions involved in the decision by you, and presented in the previous correspondence with Messrs. Wells and Steiger, in reference to the construction to be placed by this Department upon the Act of Congress of the 17th May, 1856, (11 Stats. at Large, pages 15 and 16. See No. 289,) I fully concur in the opinion expressed in your letter.

The first section of the Act of Congress referred to, makes a grant of land to the State of Florida to aid in the construction of a railroad, "from Pensacola to the state-line of Alabama in the direction of Montgomery."

The sixth section of the same act makes a distinct though similar grant to the State of Alabama, to aid in the construction of a railroad "from Montgomery, in said State, to the boundary line between Florida and Alabama, in the direction of Pensacola, and to connect with the road from Pensacola to said line."

The terms and conditions of the two grants are similar in all respects, excepting that an obligation is imposed on Alabama to have the road, in aid of which a grant is made to her, "connect with the road from Pensacola."

On a comparison of the title and provisions of this Act of May 17th, 1856, with the title and provisions of the Act of September 20, 1850, (No. 178,) under which certain questions which arose were referred to Attorney-General Crittenden, the opinion given by him on the 7th August, 1852, appears to be strictly applicable to the questions in this case.

Quoting then his words; (the names of the States only being changed,) "The whole length of the railroad through and within the State of Florida when actually surveyed and definitely located within that State, must determine, limit and define the extent of the grant to that State. And so likewise, the whole extent of the railroad within the State of Alabama as surveyed and definitely fixed, must determine the extent of the grant to that State."

Neither of said States can select more land than has been granted to her, on account of the specific road or part of a road within her limits.

The Attorney-General of the United States, on the 7th June last, communicated an opinion (No. 557,) on certain questions arising under a similar Act of Congress of February 9th, 1853, making a "grant of lands to the States of Arkansas and Missouri." He therein advised us that the definite location of the road will locate the grant upon the proper number of odd sections on each side, with which the United States shall not previously have parted with the title."

This opinion directs me how to determine the granting limits as to location.

That of Attorney-General Crittenden enables you to ascertain the extent of the grant as to quantity of land.

The law itself conjoins the location of the limits within which the selections by each State must be made, to supply the quantity of the several grants that may be found wanting, because the United States has heretofore parted with land which would otherwise be granted. It prescribes that

the selections shall be made "from the lands of the United States nearest the tiers of sections above specified," to wit, the six sections in width on each side of said roads, a proviso requiring that the lands selected "shall, in no case, be further than fifteen miles from the lines of said roads."

The location of the roads, on account of which the several grants are made, thus determines the extent of the grant, the location of the grant, and the location of the bodies of land nearest to the tiers of granted sections, from which each State may respectively select to the extent of the grant to her.

The decision of the General Land Office, communicated to Mr. Wells, the agent of the State of Florida, in the letter of the 24th October last, is therefore affirmed, and you will so advise him.

The papers in the case are herewith returned to you.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 559.

With regard to the "terminating lines" of a Railroad.

DEPARTMENT OF THE INTERIOR,
Washington, February 23, 1858.

Sir:—I have considered your reports of the 17th and 22nd instant, on the propositions of W. T. Steiger, Esq., Agent of the State of Iowa, made to this Department on the 5th instant, relative to the terminating lines of the grant to that State for railroad purposes, by the Act of Congress, approved May 15, 1856, (No. 288.)

The adjustment of the grant on these propositions, as exemplified by the map "Y" therewith, would, in my opinion be proper under the law, with a slight modification, which it is believed the State will not regard as very material.

Mr. Steiger proposes for certain terminating lines, "the middle of the channels, of the Mississippi and Missouri rivers."*

As the law, however, mentions certain points on the "Mississippi river" and "on the Missouri river," and as the public surveys extend only to these

* *Terminal lines of the grants to Iowa, for aid in the construction of railroads.*

Whether the determination of the lines by which railroad grants shall be terminated at the ends, be settled upon general principles, or decided on the words of each particular law, the case of the Iowa railroads is one of great interest. There are several lines which have been suggested for the terminal lines of such grants. 1st. Lines passing through the termini of the road, and drawn perpendicular, the straight line by which the termini are united. 2nd. Lines drawn through the termini, perpendicular to the general course of the road, for the twenty miles next the ends respectively. 3d. The lines of the public surveys which approach nearest to the respective ends of a road, and are nearest to perpendicular to the general course for the entire distance, or for the last twenty miles. 4th. Lines drawn through the ends of the road perpendicular to its last course. 5th. Semicircles, sweeping round the termini, with radii of six and fifteen miles. 6th. State lines approached or touched, or water courses at the ends of the road.

The language of the Act making a grant to Iowa, and upon which the subjoined decision of the Secretary of the Interior arose, are as follows. "From Burlington on the Mississippi River, to a point on the Missouri River, near," &c. "From the City of Davenport via Iowa City and Fort Des Moines, to Council Bluffs." "From Lyons City, northwesterly to a point of intersection, &c., &c., thence, &c., across the State to the Missouri river." "From the City of Dubuque to a point on the Missouri River, near Sioux City," &c.

rivers, my opinion is, that the grant cannot be regarded as embracing any of the water of the rivers, at the termini, either in place, or for quantity: and with this difference, the proposition should be taken as the basis of adjustment.

Very respectfully,

Your obedient servant.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 560.

Where a road has actually been fixed, the fact that another route had been surveyed will not entitle a conflicting Claimant of lands within the fixed limits to relief.

GENERAL LAND OFFICE,
March 13, 1858.

Sir:—I have the honor to acknowledge the receipt of the letter from Thomas Todd, of 13th January last, addressed to you, and by you referred to this Office on the 9th ult., "for a report." With reference to the subject of said Todd's claim, I have to state, that a letter was addressed to the party on the 10th ult., from this Office, in which the condition of the land, and the reasons why he could not pre-empt it, were set forth. A copy of said letter is herewith inclosed.

The maps on file in this Office, show that the route of the Dubuque and Pacific Railroad was "surveyed, marked and staked off" on the ground, on 6th August, 1856, *up to and beyond* section 15, township 89, range 30, west, and this Office is necessarily guided in its decisions by said maps. Mr. Todd, however, states that the Dubuque and Pacific Railroad Company, prior to the filing the certified map of their route in the Land Office at Fort Dodge, "had run many lines, embracing a section of country extending through a distance of twelve miles, north of my (his) pre-emption, and no person, 'thereabouts,' had any idea of the land being chosen within many miles of my (his) claim," &c. With reference to this, I will state that similar representations have heretofore been made concerning the mode of surveying the aforesaid road, but I do not conceive it to be the duty or power of this Office to take cognizance of such matters. If improper surveys have been returned to this Office, by which private interests are interfered with, the subject is one which belongs to the courts for investigation.

Your obedient servant,

THOS. A. HENDRICKS, Commissioner.

Hon. Jacob Thompson, Secretary of the Interior.

The Secretary decided, April 27, 1858, that no relief could be afforded Mr. Todd, in the premises.

No. 561.

In the case of the Cairo and Fulton railroad, for specified reasons it was decided to adopt the day upon which the Legislature adopted the route, as the period at which the right of the State attached to the selections.

GENERAL LAND OFFICE,
April, 16, 1858.

Sir:—I have the honor to return herewith, the letter of Orville Jennings, of 5th August, 1857, addressed to you, and by you filed in this Office for

a report, and with reference to the subject thereof, have to state that the instructions of the 2nd and 14th of February, 1856, to the District Officers, in Arkansas, to which Mr. Jennings refers, were predicated upon the assumption that the State authorities had filed at the local offices, a map of the route of the Cairo and Fulton railroad simultaneously with the filing of such map in this Office. It was subsequently ascertained, however, that maps had not been filed at *each* of the offices, and some doubts arose as to the sufficiency of those that had been filed, owing to the fact that they were not traced continuously, but simply on township diagrams, showing the line through each township separately. At one office, such maps had been filed, but no record could be found showing the date of the reception. These maps, or plats were filed by the Governor of the State, at the close of the year 1854.

Subsequently, it was discovered that at the date of the filing aforesaid, at some of the offices, the legislature had not adopted the route of the road, and upon a review of all the facts, and in consideration of the confusion growing out of the difference in dates, &c., I finally decided to adopt *the day upon which the legislature affirmed and adopted the route*, as the period at which the right of the State attached to the railroad sections. Instructions to that effect were forwarded to the Register and Receiver, at Washington, and the other offices in Arkansas, in a letter from this Office, dated November 25, 1856, and it was upon the principle set forth in that letter, that the entry, No. 10484, in the name of W. D. F. Smith, was cancelled. In my letter of 23d January, 1857, notifying the Register and Receiver at Washington, of the cancellation of said entry, (a copy of which letter is attached to the letter of Orville Jennings,) reference was made to my previous letter of November 25, 1856, and that reference, it would seem, ought to have explained satisfactorily to Mr. Jennings what he regards as a discrepancy between the instructions contained in my letters of 2d and 14th February, 1856, and the *action* of this Office, communicated to the Register and Receiver in my letter of 23d January, 1857.

With great respect, your obedient servant,

THOS. A. HENDRICKS, Commissioner.

Hon. Jacob Thompson, Secretary of Interior.

No. 562.

Where a grant has been made to two States, for the same railroad, the selecting limits of each State will be confined within its own boundaries.

DEPARTMENT OF THE INTERIOR,
Washington, June 14, 1858.

Sir:—Your report of the 2d instant, presents for my consideration, a question arising in the matter of the selection of lands enuring to the State of Alabama, under the provisions of the Act of Congress of May 17, 1856, (No. 289,) “granting public lands in alternate sections, in the States of Florida and Alabama, to aid in the construction of certain railroads in said States.”

In behalf of the State of Alabama, her agent claims the right to select lands within that State, which lie between the six and fifteen mile limits of the route of the road which has been located within the State of Florida, in view of the grant to the latter State, by the same Act of Congress.

I regard the grants made to the two States, as distinct and several. The grant to Alabama is, to aid in the construction of a railroad “from Mont-

gomery, in said State, to the boundary line between Florida and Alabama, in the direction of Pensacola," &c. The location of said road within Alabama, determines the extent and location of the grant of lands to that State. The grant is in width along the line of the road, and the selecting limits lie laterally adjacent to the granted lands.

These views, it is understood, when applied to the line of railroad from Montgomery to the boundary line between Alabama and Florida, sustain your decision adverse to the special claim of the State agent, which has been presented for my consideration.

I now return to your office, the papers which accompanied your report.

Very respectfully, your obedient servant,

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 563.

The Certificate of the Governor of Wisconsin, that the Route of the Railroad has been located, in view of the grant to the State, required. His refusal to approve will only delay the adjustment.

DEPARTMENT OF THE INTERIOR,
August 5, 1858.

Your report of the 21st ultimo, has submitted certain maps, exhibiting the route which has been surveyed and approved by the officers of the St. Croix and Lake Superior Railroad Company, for the continuation of a railroad from the St. Croix river or lake, to the west end of Lake Superior, and to Bayfield; and you submit two propositions for decision. To the second proposition a response will not be necessary at present, as the opinions to be expressed upon the first, will dispose of the entire case now before me.

Your first inquiry is, whether, under the circumstances reported, we may properly dispense with the certificate of the Governor of the State of Wisconsin, that the said route has been located in view of the grant to the State, by the Act of Congress approved June 3, 1856, (No. 292,) and is accepted by the State as located by her authority. My reply is in the negative. The St. Croix and Lake Superior Railroad Company claims to have made the location by the authority of the laws of Wisconsin, and of a compact with the Lacrosse and Milwaukee Railroad Company, entered into pursuant to a special Act of the State legislature; the president of the last mentioned company, protests against the recognition of the authority claimed under the compact; and the Governor of the State has not certified the routes described in the Act of Congress, as he was called upon to, do by your letter of the 19th August, 1856.

Under these circumstances, it appears to me that the Department should adhere to the position taken in the first place, and which properly extended a policy which had its origin under the earlier Acts of Congress, making grants of lands to States, to aid in the construction of railroads, wherein it was more explicitly prescribed that the surveys of the road should be made, and the maps of survey furnished to the General Land Office by State authority. The refusal of the Governor to take official action in regard to the survey, will not necessarily defeat the adjustment of the grant, though an adjustment may thereby be deferred for the present. The longer continuance of the reservation of the lands along the route of the proposed road, is not a necessary consequence of continued delay in taking action under the grant by the State, or its officers. In this case, unless some good cause is shown for continuing longer the reservation of the lands, they should be

forthwith restored to market. A due regard for the interests of the United States, seems to call for this course, and no just complaint can be made by the State of Wisconsin. The early withdrawal of the lands to enable the States to obtain the fullest measure of benefit from the grant, and the long continuance of the reservation, whilst the restoration of the lands to market has been repeatedly urged by citizens of the State, have evinced the liberal spirit of accommodation which directed the action of this Department, and still pervades its policy. Should the State now suffer a diminution in the quantity of lands which she might have obtained under the grant, it could be attributable only to her own neglect or refusal to take the measures necessary to avail herself of the amplest benefits of the liberality of the legislative and executive branches of the General Government.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 564.

Lands within the six mile limits of a Railroad, though they had been subject to entry at the Graduation prices, upon being restored, must be sold at \$2 50 per acre.

GENERAL LAND OFFICE.

Gentlemen :—I have the honor to acknowledge the receipt of your joint communication of the 29th ultimo, on the subject of the price of lands within the limits of the railroad grant just made by Congress to the States of Florida and Alabama, and calling my attention to the second section of the Act making the grant.

In reply, I have to state, that these lands were subject to the Graduation Act, of 4th August, 1854, until their withdrawal from market for the railroad grant. The Act, granting lands for railroads, removes the lands from the operation of the Graduation law, (No. 251,) and expressly requires that they shall be sold at double the "*minimum price*;" this can only mean double the minimum price of \$1 25 per acre of the public lands; that being the ordinary minimum fixed by law, and not double the price that the lands were selling for under the Graduation Act. Had the latter been intended, the language of the Act would have been double the "*graduation price*." There is, in fact, nothing to justify the presumption that any such intendment is contemplated in the law, for the plain reason that the provisions of the Graduation Act itself, do not in terms or otherwise, embrace or apply to lands of this class, but, on the contrary, the first section of that Act expressly excludes them, for it declares it "shall not be so construed as to extend to lands reserved to the United States, in Acts granting lands to States for railroads."

This Office therefore decides, that the alternate sections within six miles of the route, will have to be sold at a minimum of \$2 50 per acre when again offered and thrown open to sale.

I am, very respectfully,
Your obedient servant,

THOS. A. HENDRICKS, Commissioner.

To the Hon. D. L. Yulee and W. R. W. Cobb, Washington, D. C.

"After a most careful consideration (of the foregoing,) I am unable to arrive at different conclusions than those entertained by the Commissioner, &c.

R. McCLELLAND, Secretary.

No. 565.

It having been decided that the alternate reserved sections along the line of the Illinois Central railroad, were subject to pre-emption at double the minimum price, that policy will be adhered to.

DEPARTMENT OF THE INTERIOR,
January 18, 1859.

The case involving the pre-emption claim of Thos. H. Perry to a certain tract of land in the Springfield, Illinois, District, whose right is contested by James C. Walker, has been examined and considered, and the papers which were received with your letter of the 8th ultimo, are herewith returned.

The pre-emption entry of said Perry, was permitted by the Register and Receiver on the 12th December, 1855, satisfactory proof being presented to them. A rehearing of the case was had in July, 1858, and additional testimony taken, whereupon the Register and Receiver decided that "the pre-emption of Thomas H. Perry, is a valid one." This decision was concurred in by you, and an appeal therefrom was taken to this Department. Upon a revision of the case I am of the opinion that nothing appears therein to vitiate or invalidate the pre-emption entry of said Perry, which will justify the reversal of the action and decision of the local officers. The question of pre-emptibility of the alternate reserved sections, belonging to the United States, within the six mile limits of the Illinois Central railroad, having been decided affirmatively by my predecessor, and that decision having been adopted as the settled rule and policy of this Department, will be adhered to in the determination of claims to this class of lands, and the entry of said Perry, having been admitted pursuant thereto, the same will not be disturbed.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 566.

Persons who had made entries, and can prove that they settled before the location of the line of the Montgomery and Pensacola railroad, are entitled to have their entries carried into patents, notwithstanding their withdrawal, &c.

DEPARTMENT OF THE INTERIOR,
February 1, 1859.

Having considered your report of the 4th ultimo, and accompanying papers, relative to the cancellation of certain entries of land in Butler county, Alabama, along the line of the railroad, from Montgomery to the boundary line between Florida and Alabama, in the direction of Pensacola, I propose the following suggestions and conclusions to be carried out by your office.

The withdrawal of the lands along the line of the railroad, before the right of the State attached, under the grant of 17th May, 1856, (No. 289,) was in special terms, and not intended to restrict the acquisition of the public lands by actual settlers and cultivators.

The restrictions resulting from the grant, and the law making the grant, must however be sustained by our action, even though the interests of some actual settlers are involved. Whilst administering the law in its meaning and effect, I think the instructions respecting the withdrawal of

the lands from market, should be construed as not embracing any lands, excepting those clearly within them. I remark, therefore, in the first place, as to the restrictions imposed by the statute, that it is clear that the local officers could have no authority to sell lands falling to the State by the grant, after the definite location of the line of the railroad, or to sell lands selected by the State as indemnity, after the notification by the State authorities, to your office, of the tracts so selected. Secondly, That the sections remaining to the United States, as alternate to the granted sections, could not be sold by the local officers, at private entry, after the definite location of the road, until after they had been first offered at public sale, at the increased price. The graduation entries, if any, that have been admitted by the local officers at Greenville, and are found to conflict with these views, must remain cancelled. But I do not regard the sales that have been made to actual settlers and cultivators, as in violation of the instructions, and am therefore of the opinion that all persons who have made entries, and can prove that they had settled upon, or cultivated the land before the location of the line of the railroad, if the land be within the six mile limits, or before final selection by the State, if on lands falling to her between the six and fifteen mile limits, are now entitled to have their entries carried into patent. So also all those who prior to the receipt at the Greenville office, of your instructions of the 9th October, 1856, had entered lands falling to the United States, outside the six mile limits, should, I think, receive their patents, according to the regulations in similar cases.

The chairman of the Committee on Public Lands, of the House, Hon. W. R. W. Cobb, will be furnished with copies of your report, and this communication, with the suggestion that Congress could grant relief to those persons, who before the location of the railroad route had entered, and have since settled and cultivated, any of the lands which have been reserved to the United States, within the six mile limits of the road, by authorizing patents to issue upon the entries heretofore made, or on condition of paying the difference between the rates already paid, and the enhanced price of the lands.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 567.

An approval of the route of the Marquette and Ontonagon railroad, by the State authorities of Michigan, required.

Reasons for not approving different maps of routes, given.

DEPARTMENT OF THE INTERIOR,

April 6, 1859.

Your report of the 25th ultimo, submitted for my consideration, and instructions, the question of "the acceptance of the map" of the location of the Marquette and Ontonagon railroad, "as the basis of the adjustment" of the grant to the State of Michigan, for aid in the construction of a railroad from Marquette to Ontonagon, per Act of Congress, approved, June 3, 1856. (No. 293.) On a careful examination of the papers, I find that a copy of the map of the route of the railroad, in two divisions, was filed in your office in December, 1857, which bears the certificate, with the official seal of the company, by its President and Secretary, that it is a map of the location made by a resolution of the Board of Directors. This map bears also the

approval of the Governor of the State, of November 24, 1857, and on the 19th March, 1858, it was confirmed by the State Board of Control, as required by the laws of Michigan. The "statement marked A, and map now presented by Mr. Wilde, chief engineer of the company," referred to in your report, as explaining the objections that had been taken to the route, approved by the Governor, appear to me to confirm those objections; because said statements, in connection with the "map therewith presented," of a route to a considerable extent, very different from the other, tends to show that the map now offered, is the true map of the actual survey of the line, and that the route indicated by the last map is in all respects better, and more direct. This new map, is the one on which the flag stations of survey are marked, and to which the statement A, refers; and on comparing it with the map filed in your office, in 1857, it is found that the route indicated by the last map, is entirely different from that marked on the first, for some ten or twelve miles of the first section of the road, and some twenty-five or thirty miles, on the second section, and these alterations of the route, are not shown to have been accepted or approved by the State. In the present state of the case, it is clear to me, that the first map must be rejected, because it does not represent the actually surveyed line of the road, and is not the most direct practicable route between Marquette and Ontonagon, and it is no less clear that the second map, lately presented by Mr. Wilde the engineer of the railroad company, cannot be accepted by your office, unless it shall be shown that it has been duly ratified and approved by the proper authorities of the State of Michigan. The papers and maps which accompanied your report, are herewith returned.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 568.

In cases where lands are claimed by States under both swamp and railroad grants, the Act of 3d March, 1857, will be considered as confirming swamp selections only as against the United States.

If the lands are found not to have passed by the Swamp grant to the State, they will be included in the lists of railroad lands.

DEPARTMENT OF THE INTERIOR,
April 10, 1859.

Having considered your report of the 5th instant, in relation to the course to be pursued by your office, in cases where lands selected as swamp lands and reported to and remaining on the files of your office, on the 3d March 1857, (No. 319,) and found to have the same legal designation as lands granted for railroad purposes, along the lines of roads that had become "definitely fixed before that date," I have to state that I do not approve a return to the policy which prevailed under the Circulars of December 21, 1850, and February 11, 1856.

If the certification of any such tracts as swamp lands, enuring to a State under the Act of September 28, 1850, (No. 182,) is contested by the production of any proof or information sufficient to create a doubt as to the actual character of the tract or tracts, you will be under the necessity of obtaining, through the proper officers, such authentic evidence or official reports as will enable you to decide; but if no contest is made none need be invited. I think we may proceed to act upon the selections in the cases of such ap-

parently conflicting grants under the laws making the grants, treating the Act, 3d March, 1857, as confirming swamp selections only as against the United States, and not as extending to those cases in which the provisions of that law appear exactly to balance each other.

If, therefore, the tracts in question, have been or can be satisfactorily shown in the regular course of proceeding, under the swamp land laws, to be swamp and overflowed, they should be certified to the State as such. If, however, the lands are not found to have passed to the State, by the first grant, they will be included in the lists of railroad lands as falling under the later grant.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 569.

Lands between the six and fifteen mile limits of a railroad, are subject to Pre-emptions.

DEPARTMENT OF THE INTERIOR,
April 11, 1859.

In the case involving the pre-emption claim of Donald R. McDonald, to certain lands within the six mile limits of the Florida Railroad, which was received with your letter of 4th February, 1859, I concur in opinion with you that the land embraced in his claim which lies within the six mile limits of said railroad, is not subject to pre-emption entry by said McDonald, as claimed by him.

It is understood that the northwest quarter of southeast quarter of section 21, township 12 south, range 18, east, is between the six and fifteen mile limits of said road, and if it shall appear that the improvements of said McDonald are situated thereon, no reason is perceived for cancelling the entry of that particular subdivision. The other portions of the lands claimed are within the six mile limits of the road, and it appears that the same have been approved to the State of Florida. The pre-emption claim thereto is invalid, and the entry thereof has been properly cancelled. The papers belonging to the case are herewith returned.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 570.

Where doubt exists as to the construction of a railroad grant, there is a propriety in administering the grant according to the terms of acceptance.

Where the locations of the lines of roads are coincident, the State will not be entitled to indemnity for any diminution in the quantity of any or all the grants.

DEPARTMENT OF THE INTERIOR,
April 12, 1859.

Your report of the 6th instant, has submitted a map of the location of a route of a railroad from Little Bay de Noquette to Marquette, adopted in November, 1857, by the Board of Directors of the railroad company, and approved December 1, 1857, by the Governor of Michigan, in view of the grant to that State for aid in the construction of certain railroads, by the Act of Congress, approved June 3, 1856.

With your report of the 25th ultimo, a line of route for a railroad from Marquette to Ontonagon was before me, which had been presented to your office as a location in view of the same grant; and some doubt exists whether we ought not to regard the Act of Congress as having made provision for a single road from Little Bay de Noquette to Ontonagon via Marquette. By the same act of Congress, land is granted for aid in constructing a road from Marquette to the Wisconsin State line, and the diagram exhibiting the routes of the three roads, which we should expect to radiate from Marquette, shows that from Marquette to the vicinity of Seal Lake, a distance of about seventeen miles, the lines of the three railroads have been located over the same route.

These two questions are brought to our notice:—Firstly, Can we regard the three as separate roads; and why? If so, can the location of the routes of the three, on lines coincident for seventeen miles, be recognized, if no other valid objection exists, to such location? I think that we may regard the three as separate roads, inasmuch as the State, by the legislative act accepting the grant, and the approval of the several locations of the routes, has so treated them; where doubt exists as to the construction of the grant, and such grant has been accepted, with a particular understanding on the part of the grantee, there is an obvious propriety in administering the grant according to the terms of acceptance.

Secondly. As to the location on lines coincident for a considerable distance, it is shown, that all the lines must attain an elevation of seven hundred to nine hundred and fifty feet above the waters of Lake Superior, within the first fifteen or eighteen miles of their route, on any line or lines that may be selected, in going from Marquette; and on the seventeen miles in question, it appears that a railroad has already been constructed at a very heavy expense, which runs through the heart of the iron region. The adoption of this seventeen miles as a part of the line from Little Bay de Noquette to Marquette, is claimed with peculiar force, for the reason that the Iron Mountain Railroad has been purchased by the Bay de Noquette and Marquette Railroad Company, to which the State had passed the land grant; and the State legislature has, by a recent law, confirmed the sale, and the consequent consolidation of the two roads, thus making the seventeen miles a part of the line of route between the two places, Bay de Noquette and Marquette. On the filing in your office of the authenticated copy of the recent State law referred to, and the production of the evidence that the two companies thereby consolidated, have, as required by the third section thereof, filed their assent in the office of the Secretary of State, at Lansing, I think the map before me may be accepted as the basis for the adjustment of the grant, on the principles which I will proceed to indicate.

As the map presented, does not show the date of the field-work of survey, and the president of the company, which claims in the interest of the State, proposes to waive any claim of prior specific date, and adopt the date of the approval by the Governor of the State of the map of the location as the date of the survey of the entire line, I think we may adopt the latter date as the date of the survey.

In acquiescing in the action of the legislature and executive of the State of Michigan, in treating the three roads named as separate roads, having distinct grants for their benefit, and in locating the lines of said roads so they will coincide for a distance of about seventeen miles, I deem it proper to add, that the Act of Congress of June 3, 1856, (No. 293,) grants only every alternate section of land, designated by odd numbers, for six sections in width on each side of "each of said roads," and not a quantity of land equal to every alternate section for six sections in width, &c., for their entire length upon

the ground. It follows, that where the locations of the lines of the roads are coincident, the alternate sections have only been granted, and they but once; and as the indemnity which the State can claim, extends only for "any sections or parts of sections granted as aforesaid," "which the United States has sold, or to which the right of pre-emption has attached," or, "which the United States has otherwise appropriated," it is clear that the State will not be entitled to indemnity for any diminution in the quantity of any or all the three grants, consequent upon the interference of the granting and selecting limits, by reason of the coincident locations of the roads, for a part of their respective lines. The map and papers submitted with your report, are herewith returned to your office.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 571.

Before title to Railroad Lands will vest in the State, the route must be staked off and marked upon the ground, in such manner as to indicate clearly the fixedness of the route.

Mode of determining the Route of a Road, and the exact lands to which the State is entitled, specified.

Conflicting Pre-emption Claims to lands claimed under a Railroad grant, considered.

DEPARTMENT OF THE INTERIOR,
Washington, April 21, 1859.

Sir:—Your report of the 8th November last, upon the petition of certain settlers in townships 27 and 28 north, of range 18, east, and relative to certain pre-emption entries at the Menasha Land Office, which have been ordered to be cancelled; and also your report of the 17th ultimo, in the case of Closson Shurtleff's pre-emption entry at Menasha, on the 17th May, 1858, in section 33, township 32 north, range 16, east, have been carefully considered, and my conclusions are as follows:—

The title to odd numbered sections, within the six mile limits of the St. Paul and Fon-du-Lac Railroad line, did not vest in the State of Wisconsin from a survey of the route of the road, unless said route was staked off and marked upon the ground, so that the line of route could be readily found and seen by any ordinary observer, who, as an individual seeking a place to settle, or as a resident of the vicinity, should go upon the ground to view the land, or to find and observe the exact location of the line of the road for any one mile of its course.

The mere survey of a line, as Attorney-General Cushing decided, "fixes nothing," * * "It is means of information, not location." "Definitely fixed, implies fixed without capacity of change." When "surveying and marking the line on the ground," "definitely fixes" the line of a railroad route, I think it is necessarily implied that stakes and stones are set, and marks on the ground made, which will fix on the surface of the earth the exact route over which the road will pass, as a fact notorious and easily observed as it passes through specific sections of land; the grant being by sections, as to relative position, and as to the strip of land wherein the alternates granted are to be found.

When only a preliminary survey has been made, pursuant to which the

State proposes to show on a map the localities in which the route will fall, it is evident that the map must connect the route with the lines of the public surveys, showing the specific sections of land through which the road will be built, and thereby the exact line upon the earth on which the route will fall; otherwise, the location is not "definite," nor is it thereby indicated precisely, where the limits of the grant in place will fall. Even then we cannot regard a location on a map, as "definitely fixing" the route, till it is concluded that no subsequent act of the State, or of the United States, shall change that route; and this cannot be assumed either by the grantor or grantee, until both are committed by their proper officers or agents, to a recognition of one and the same line of location.

In the case now before me, it appears that a map of the line of the railroad, "from Fon-du-Lac, on Lake Winnebago, northerly to the State line," was, on the 3d December, 1857, accepted as the basis of the adjustment of the grant to Wisconsin, to aid in the construction of said railroad. This map is so marked as to indicate the actual staking off on the ground, at various dates in May, August, and December, 1856, of a part of the line of the road, viz., commencing at Fon-du-Lac, and running north to a point near the west end of Lake Shawano. At this last named point, a line of a survey, apparently of a preliminary character, commencing at the State line, October 6, 1857, and extending from north to south, closes with the part of the line previously mentioned on the 16th October, 1857. As this survey last mentioned extended from six to ten miles per day, it is evident that the line could not be marked off and staked along on the surface of the earth; and so the depositions tend also to show the fact to be. When you accepted the map, December 3, 1857, the townships through which the proposed road is to pass, had been surveyed only as far north as the north line of township thirty. Your acceptance therefore, can be regarded as the date of the vestiture of the title to the odd numbered sections thereby determined to lie within the granting limits of the line of location from near the west end of Lake Shawano, in section 29, of township 27, range 16, to the north line of township 30 north, range 15, east:—but the acceptance must be regarded merely as preliminary, for that part of the proposed line of road, which extended through lands unsurveyed, and townships not subdivided. The marking on a general map of the region of country, the line of a preliminary survey of route through an unsurveyed region, can show only the relation of the proposed route to great natural objects, which may or may not be properly laid down on the map. Nothing is thereby "definitely fixed." No odd sections are reserved and set off from those with even numbers. It will be necessary for the State after the public surveys are made, to cause to be prepared and filed in your office, and in the local land offices, maps showing the connection of that part of their route, with the lines of the public surveys, which, when accepted by you as correct, may be regarded as determining and definitely fixing that part of the route, and the limits thereto conjoined, within which lands are granted in place and reserved to the United States, to be sold at the enhanced price.

As a matter of precaution in such cases, I deem it proper that evidence of the filing of a copy of the map, at the local land office for the district in which the lands lie, be furnished to you, before final action is had by your office thereon. To await the "definite fixing" of the locations of railroads, to aid the construction of which grants have been made to States, and to facilitate the final adjustment of such grants, large bodies of public lands have been withheld from market; but when the State has not taken the

steps necessary to vest the title to any of the lands in herself, they are subject at any time to be restored to sale.

In the cases now before me, I am of the opinion, and so decide, that there has not been a vestiture of title in the State to the odd numbered tracts between the six and fifteen mile limits of any part of the line of railroad from Fon-du-Lac, northerly, to the Wisconsin State line. The grant has not been adjusted for quantity; the Governor has not selected specific tracts, nor has the Secretary of the Interior, as is prescribed by law, approved the lists of such selections. We are simply reserving those odd numbered sections in view of a future adjustment.

Under your instructions of the 27th July, 1858, the land officers at Menasha, have refused to admit pre-emption entries of lands in townships which were unsurveyed, when your notices of June, 1856, Nos. 560 and 566, were issued, and when your special order of December 18, 1856, was received by them. In their observance of the instructions of July, 1858, they will be sustained; and the sections in unsurveyed townships which fall into the odd numbers will be regarded as withdrawn by those instructions from claim by pre-emption, so long as those instructions are in force, and unchanged.

There was a time however, (prior to the receipt at the local land office, of your letter of the 27th July, 1858,) when the officers at Menasha, acting in good faith, and with some good reasons for their opinions, thought that the townships, which had not been surveyed when the orders of 1856 were issued, were not included therein. Strictly construed, those orders reached only to lands which were in market at the date of withdrawal, and in this view, the local officers, after the return of surveys of additional townships, appear to have regarded such townships as falling under the operation of the pre-emption laws, and consequently they allowed pre-emptions therein, until otherwise instructed by you. Even if it be admitted that the local officers did not properly construe and apply the instructions of 1856, and it appears that the officers and pre-emptors have acted in good faith, I am of the opinion that those pre-emptors who did effect entries in odd numbered sections, outside the six mile limits of the road, ought to have their entries confirmed and carried into patent.

If the entry of Closson Shurtluff was cancelled, for the single reason that a title to the land he claimed had vested in the State of Wisconsin, I am of the opinion that his entry should be reinstated.

In reference to the claims of Bracy, Helmky, Newton, Pier and Moody, I remark, that the lands which they claim to have settled, are also outside the six mile limits of the railroad line. The public notice, No. 594, if such notice was necessary for that purpose, did restore the townships 27 and 28, of range 18, to entry by pre-emption, until your order of the 9th April, 1858, and the diagram therewith enclosed, reached the Land Office at Menasha, which the Register certifies was on the 15th day of that month. The pre-emptors in the townships described in the notice, No. 594, as restored to pre-emption at Menasha, on the 5th April, 1858, who had effected settlements in good faith, prior to the 15th day of that month, and who came forward within three months, and offered to file their declaratory statements, did all in their power to comply with the pre-emption laws, and if they have heretofore been refused the privilege of making the proper proof and payment for the lands, which they have so settled and claimed, they are now entitled to do so.

The local officers will, however, observe your orders of the 9th April, and

27th July, 1858, as excluding settlements and claims by pre-emption, accruing subsequent to the receipt by them of those orders respectively.

The papers which you report, with the map of location of the railroad line, are now returned to your office.

Very respectfully,

Your obedient servant,

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 572.

In adjusting Railroad grants, the general Land Office will transact the business with the State authorities only.

DEPARTMENT OF THE INTERIOR,
Washington, July 18, 1859.

Gentlemen :—Your memorial, dated the 8th instant, asking a recognition by this Department, of your claim, and the issuance of a patent to you, as trustees of the Lacrosse and Milwaukie Railroad company for certain lands along that part of the line of said railroad, which extends from Portage City to Tomah, Wisconsin, has been received and carefully considered.

Several of the matters to which my attention is thus invited, were before me in August 1858, and under date of the 5th of that month, I addressed a communication to N. P. Stanton, Esq., the President of the Lacrosse and Milwaukie railroad company, which explains the position of this Department, in reference to the controversy between the executive of the State, and the railroad company. A copy of that communication is enclosed for your information.

It seems to be unnecessary to add much to what is there said, in order to reply to all your propositions. It is deemed proper, however, to remark, that the Act of Congress of June 3, 1856, which is the basis of the action of this Department in the case, has made a grant or grants to the State of Wisconsin, and it has been the uniform practice, in adjusting similar grants in the general land office, to transact the business directly with the State authorities, and with them alone.

Parties who seek the recognition or completion of the title of the State to any particular lands, must therefore obtain the intervention of the State officers, and it is not necessary for us to entertain or consider questions which arise upon State legislation concerning the lands; questions which appear to be more appropriate for the State authorities or the courts.

This position is more manifestly proper, when it is considered that in the received construction of existing laws of Congress, a patent is entirely unnecessary to assure the title of the State to any of the lands granted by Congress, for aid in constructing railroads. These grants are accepted by the States with conditions, and so long as those conditions are complied with by the States, the title of a State to any granted tracts, will be duly respected by all the officers of this Department.

J. THOMPSON, Secretary.

Greene C. Bronson and others, New York City.

No. 573.

Where the Governor of the State and the officers of the company, certified the location of a railroad, as that made under the law, objections by others cannot be permitted to arrest the adjustment of the grant.

DEPARTMENT OF THE INTERIOR,
Washington, August 29, 1859.

Sir:—Herewith are returned the map of the route of the Transit Railroad, Minnesota, and the papers relative thereto, which accompanied your report of the 26th instant. This map is recognized by the Governor of the State, as a correct map of the location of the road, under the law of Congress, making the grant to aid in the construction of a railroad from Winona, via St. Peters, “to a point on the Big Sioux river, south of the forty-fifth parallel of north latitude, for so much of said road as lies between Winona and the west line of range No. 31.” Beyond that, the public surveys have not yet been extended, but as far as the location has been made, the line of route is reasonably direct, and the general course of the road is undoubtedly such as was contemplated by the Act of Congress, of 3d March, 1857, (No. 312,) by which the grant was made.

It appears to be a matter of right with the State, and of convenience to the United States, to have the adjustment of the grant proceeded with, as far as the United States surveys have progressed.

Sundry individuals appear to have caused another route to be examined by a competent engineer, who reports that the State might have adopted a more direct route than that now certified to us, but the Government of the State and the officers of the company, have certified the location before us, as that made under the law, and as the cheapest and best route between the extreme points on the map, making St. Peters an intermediate point; and the objections cannot be properly interposed before this Department, to arrest the adjustment of the grant, according to the line of location, recognized by the State authorities.

One informality in the certification of this map, is observed. The Governor's certificate refers to his having caused the great seal of the State to be thereto attached, but in fact the seal is wanting. You can return the map to the Governor, and call his attention to the fact, as the seal ought to be supplied before the Department is fully committed in the premises. When that is done, there will not be any obstacle before the Department, which ought to prevent the recognition of the map as the basis for the adjustment of the grant along the line of route thereby platted.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

TITLE IX.

Swamp Land Selections.

SWAMP AND OVERFLOWED LANDS.

[Congress, by an Act approved 2d March, 1849, (No. 166,) entitled "An Act to aid the State of Louisiana, in draining the swamp lands therein" granted to said State, "the whole of those swamp and overflowed lands, which may be or are found unfit for cultivation," with certain exceptions, to wit: "lands fronting on rivers, creeks, bayous, water-courses, &c., which have been surveyed into lots or tracts, under the Acts of third March, eighteen hundred and eleven, and twenty-fourth May, eighteen hundred and twenty-four." This grant is peculiar to the State of Louisiana.

By an Act approved September 28, 1850, (No. 182,) entitled, "An Act to enable the State of Arkansas, and other States, to reclaim the 'Swamp Lands' within their limits," Congress grants to the State of Arkansas, "the whole of those swamp and overflowed lands, made unfit thereby for cultivation," lying within her limits. The 4th section of said Act extends the benefits thereof to "each of the other States of the Union, in which such swamp and overflowed lands, known or designated as aforesaid, may be situated." By this Act, the lands in Louisiana, excepted from the Act of 2d March, 1849, are granted to that State.

In adopting a basis upon which the lands of this class should be ascertained, the State authorities were requested to indicate a method of selection which they would adopt in adjusting the grants. With the exceptions of Michigan, Wisconsin, Alabama, and California, the States affected, agreed to ascertain the lands by examination in the field. Michigan and Wisconsin adopted the field notes of the survey as the basis of their acceptance. Alabama and California, have not indicated any course of selection, as the basis of their acceptance.

By the Act of Congress, approved March 2, 1855, (No. 275,) it is provided, that the President of the United States cause patents to be issued to those who have made entries of public lands, claimed as swamp lands, prior to the issue of patents to the State, provided, that where the State has disposed of any tract of said land, prior to the entry of the same under the pre-emption or other laws of the United States, no patent shall issue until the State has relinquished its claim thereto.

This Act provides indemnity to the States, for the lands thus disposed of by the United States Government, upon complying with certain requirements mentioned in the second section thereof.

The Act, approved 3d March, 1857, (No. 308,) confirms to the State all the swamp land selections, heretofore made, &c., and continues in force and extends the provisions of the Act of 2d March, 1855.]

No. 574.

GENERAL LAND OFFICE,
November 21, 1850.

Sir :—By the Act of Congress, entitled “An Act to enable the State of Arkansas and other States, to reclaim the ‘swamp lands’ within their limits,” approved September 28, 1850, (No. 182,) it is directed “That, to enable the State of Arkansas to construct the necessary levees and drains to reclaim the swamp and overflowed lands therein, the whole of those swamp and overflowed lands made thereby unfit for cultivation which shall remain unsold at the passage of this Act shall be, and the same are hereby granted to said State.”

1st. By the 4th section of this Act, it is directed that the provisions of it shall be extended to, and their benefits be conferred upon, each of the other States of the Union in which such swamp and overflowed lands may be situated.

2d. And “that in making out a list and plats of the lands aforesaid, all legal subdivisions, the greater part of which is ‘wet and unfit for cultivation,’ shall be included in said lists and plats; but when the greater part of a subdivision is not of that character, the whole of it shall be excluded therefrom.”

This Act clearly and unequivocally grants to the several States, those lands which, from being swampy or subject to overflow, are unfit for cultivation. In this class is included also, all lands which, though dry part of the year, are subject to inundation at the planting, growing, or harvesting season, so as to destroy the crop, and therefore are unfit for cultivation, taking the average of the seasons, for a reasonable number of years, as the rule of determination.

You will please make out a list of all the lands thus granted to the State, designating those which have been sold or otherwise disposed of since the passage of the law, and the price paid for them when purchased.

The only reliable data in your possession from which these lists can be made out, are the ——— notes of the surveys on file in your Office; and if the authorities of the State are willing to adopt these as the basis of those lists, you will so regard them. If not, and those authorities furnish you satisfactory evidence that any lands are of the character embraced by the grant, you will so report them.

The following general principles will govern you in making up these lists, to wit:

Where the field notes are the basis, and the intersections of the lines of swamp or overflow with those of the public surveys alone are given, those intersections may be connected by straight lines; and all legal subdivisions, the greater part of which are shown by these lines to be within the swamp or overflow, will be certified to the State; the balance will remain the property of the government.

Where the State authorities may conclude to have the surveys made to determine the boundaries of the swamp or overflowed lands, those boundaries alone should be surveyed, taking connections with the nearest section or township corners; or

Where the swamp or overflowed lands are on the borders of a stream or lake, the stream or lake could be meandered and ordinates surveyed at suitable intervals, from the borders of the stream or lake to the margin of the swamp or overflowed lands, and by connecting the ends of those ordinates next to that margin by straight lines, the boundaries of the swamp or overflowed lands can be ascertained with sufficient accuracy. In no case, however, should any such boundaries or ordinates be marked in the field, as

they may produce difficulty in determining the lines and corners of the public surveys hereafter, and thus lead to litigation. The selections in all these cases will be made as before directed. Where satisfactory evidence is produced that the whole of a township, or of any particular or specified part of a township, or the whole of a tract of country bounded by specified surveyed or natural boundaries, is of the character embraced by the grant, you will so report it. The adjacent subdivisions, however, to be subject to the regulations above given; and in every case under each rule or principle herein prescribed, forty-acre lots or quarter-quarter sections will be regarded as the legal subdivisions contemplated by the law.

The affidavits of the county surveyors and other respectable persons, that they understand and have examined the lines, and that the lands bounded by lines thus examined and particularly designated in the affidavit, are of the character embraced by the law, should be sufficient.

The line or boundary of the overflow, that renders the land unfit for regular cultivation, may be adopted as that which regulates the grant.

You will make out lists of these lands as early as practicable, according to the following form, one copy of which you will transmit to the land officers and another to this Office. The lands selected should be reserved from sale, and after those selections are approved by the Secretary of the Interior, the Register should enter all the lands so selected in his tract book as "granted to the State by Act of 28th September, 1850, being swamp or overflowed lands," and on the plats enter on each tract "State Act of 28th September, 1850." Copies of the approved lists will be sent to the Registers for this purpose. Your early attention is requested in this matter, that the grant may be disposed of as speedily as possible.

Very respectfully, your obedient servant,

J. BUTTERFIELD, Commissioner.

PART OF SECTION.	SECTION.	TOWNSHIP.	RANGE.	REMARKS.

No. 575.

"Swamp and Overflowed Lands."—Public Notice.

Pursuant to the instructions of the Secretary of the Interior, public notice is hereby given, that, in order to bring to a close the business under the Act of Congress, approved September 28, 1850, (No. 182,) entitled "An Act to enable the State of Arkansas, and other States, to reclaim the 'Swamp Lands' within their limits," and at the same time afford to parties who claim that portions of the lands selected under said law are dry and fit for cultivation, an opportunity to introduce evidence, all lands so selected, to the approval whereof no objection be made within six months from the date hereof, will be certified and patented to the States.

Such objections as are contemplated by the above, must be made under oath, and filed with the Register and Receiver of the proper land office for

transmission to the General Land Office. The necessary forms for affidavits are in the hands of said officers.

The following classes of land are exempt from objection, to wit :

1st. Lands entered with cash, or located with military bounty land warrants or scrip, after the passage of the Act of 28th September, 1850, (No. 182,) and prior to the passage of the Act of 2d March, 1855, (No. 275,) "For the relief of purchasers and locators of swamp and overflowed lands."

2d. Lands already patented to the State under the swamp law.

In all cases where objection is raised, testimony must be taken before the Register and Receiver of the land office at such time after the expiration of said six months as they may appoint, with the consent of the Commissioner of the General Land Office.

The lists of swamp and overflowed lands are open to inspection during the regular business hours of the land office.

Given under my hand, at the city of Washington, this 21st day of December, 1855.

THOS. A. HENDRICKS,
Commissioner of the General Land Office.

Form of Affidavit in Contested cases under the Swamp Land Grant.

State of —, County of —, ss.

On this — day of —, 1856, personally appeared before me, the undersigned, Register of the Land Office at —, in said State, —, who being by me duly sworn, deposes and says, that he is well acquainted with the character of the soil in the following described tract of land, to wit : — of section — in township — of range — in the district of lands subject to sale at — in the State aforesaid, and being in the county of —; that he has been over and examined the lines of said land, and the marks or designations on the corner posts or trees, and from such examination, has ascertained and knows the greater part of each forty-acre tract thereof to be dry and fit for cultivation, without artificial drainage or embankment, and free from such regular periodical overflow, either at the planting, growing or harvesting season, as would materially injure or destroy a crop. And further, that such was the character thereof on the 28th of September, 1850, the day on which the Swamp Land law was passed.

Subscribed and sworn to before me, on the day aforesaid.

—, Register.

NOTE.—It is not indispensable that the foregoing affidavit should be made before the land officers. Where that cannot be conveniently done, it may be made before any officer authorized to administer oaths, and in that case, his official character must be certified under seal.

No. 576.

Circular.—"Swamp Lands."*

GENERAL LAND OFFICE,
February 11, 1856.

Gentlemen :—You have already been furnished with copies of the public notice relative to "swamp and overflowed lands," issued from this Office under date of 21st December last ; and, also, with the form of affidavit required from contestants of the State's claim to lands alleged to have been

* See No. 577.

erroneously selected under the Act of Congress approved September 28, 1850, (No. 182.) In the letter by which said papers were accompanied, it was stated that further instructions on the subject would be furnished to you at an early day.

The purpose of this circular is to set forth, in a brief and concise manner, the several steps necessary to be taken by you in conducting cases of the nature contemplated by the public notice, from their inception to their consummation; and a careful and steadfast adherence to the rules herein prescribed will be imperatively required of you.

In the first place, you are required to receive all affidavits offered to you, endorse upon them the date of their receipt, the name and address of the party by whom filed, or his agent, and transmit them to this Office.

These returns may be made at such times as shall best suit your own convenience; but shall not, in any case, be delayed longer than one month, because it is essential that all affidavits should be sent here for examination as early as possible, in order that, if any are found to be defective, to refer to lands exempt from objection, to embrace tracts previously applied for, or present other difficulties, an opportunity for correspondence with the party, and for correction of the papers, may be afforded before the expiration of the time limited by the notice aforesaid.

When the prescribed time (six months from the date of said notice,) shall have expired, you will be furnished with a complete list of all the lands relative to which affidavits have been filed, exhibiting the tract or tracts contested, the name of the contestant, the date of application, and the order in which testimony is to be taken. This will be sent to you in duplicate, one copy to be retained in your possession, as a guide to your own action, and the other transmitted to the proper State authorities having control of the swamp land business, with a notice, setting forth, that, under the instructions of this Office, you will, on a certain day, at least thirty days thereafter, at an hour and place to be designated, commence taking testimony relative to the lands, and continue the hearing from day to day until the business is concluded.

At the time of giving notice to the State authorities, you will also give or send notice to the several contestants, or their agents, whose names and residences you will find on the list, specifying therein the number of each particular case—as designated in the list furnished by this Office—and the particular day on which it will be reached.

This you must determine, as nearly as possible, by an examination of the papers; and it is expected that you will exercise great care and discretion in the matter.

The important interests involved in these cases demand this at your hands; and your own labors will be materially lessened by a systematic and well considered arrangement.

In the several States where the "swamp lands" have been donated to the counties, the lists will be prepared as accurately as possible in view of the lack of information regarding their limits, so as to embrace all of the lands in each county, and the cases numbered and heard by you in regular order.

The list furnished by this Office will be your calendar, and you will proceed regularly through the same, without preference or favor to any party, calling each case on the day specified in the notice. Upon good cause shown you may postpone the hearing of any case, but with the understanding that the same shall be put at the foot of the calendar, or heard at such time as shall not interfere with the rights or interests of parties awaiting your action.

Great discretion must be exercised, however, in granting postponements, and they should be seldom allowed except by mutual consent of the parties in interest.

It will be required that at least ten cases shall be disposed of on each day, unless the same embrace so many tracts that the labor cannot possibly be discharged in connection with your other official duties. Whenever it may occur that a case arises which cannot be fully heard without much expenditure of time, it would, perhaps, be advisable, with the consent of the parties, to take testimony out of the regular hours of transacting business, so as not to interfere with the systematic progress through the calendar.

The method of taking testimony will be as follows: on the day and at the time appointed, you will give notice that you are ready to proceed with the case, specifying its number, calling the name of the contestant or his agent, and also the party to whom notice has been issued on behalf of the State.

The evidence of the witnesses for the contestant must be first taken, reduced to writing, and the depositions subscribed in your presence. The agent or attorney for the State shall have the privilege of cross-examination; and when the contestant has signified the conclusion of his testimony, witnesses on behalf of the State's claim may be introduced and examined. The following interrogatories and cross-interrogatories, copies of which, printed for this especial purpose, will be furnished you, must be propounded to each witness.

Interrogatories.—State your name, age, and residence, and whether near the land in controversy.

Are you acquainted with the character of the soil in the _____ quarter of the _____ quarter of section _____, in township _____, of range _____, in the district of lands subject to sale at _____?

Is your knowledge of that land based upon an actual survey, or upon a mere examination?

Have you been over and examined the lines of said land, and the marks or designations on the corner posts or trees?

Were you familiar with that particular tract of land on or about the 28th of September, 1850? if so, state what was its character at that time, what has been its general character since, and what is its present character.

Is or is not said land susceptible of cultivation in grain or any other staple production, by reason of a swampy and wet character?

Is or is not said land susceptible of cultivation in grain or any other staple production, by reason of periodical and regular overflow?

State whether successfully to cultivate said land, it would be necessary to use artificial means? if so, what, and to what extent.

What portion of the land in question, from your survey (or examination,) did you ascertain to be dry and fit for cultivation, and what portion wet and unfit for cultivation?

What is the general character of the land in the section of country in which this tract is situated?

Cross-Interrogatories.—Are you familiar with the mode and manner of surveying and marking the public lands of the United States?

Do you make your statements as to the character of this land from your own personal knowledge, or from the representations of others?

In making the survey (or examination) of this land, did you inspect such portion of its entire surface as would enable you, from your own knowledge, to state its general character?

State at what time or times during the year, if any, the land is subject to overflow, and from what cause.

Are you, either directly or indirectly, interested in the determination of this controversy?

This form of examination, which has been adopted after mature consideration, and which, it is believed, covers all necessary points, must not be departed from except in special cases; as, for instance, where witnesses are produced on both sides, whose statements are directly at variance, and equally entitled to credit. In all instances it will be required that the questions shall be distinctly read to the witnesses, their answers reduced to writing in their presence, and the deposition subscribed to on the day appointed for the hearing and in the presence of the parties in attendance. The credibility of each witness testifying must be certified, in writing, by persons known to you.

To the testimony taken in each case you will append a report, setting forth the date of notice, the parties in attendance, and all material facts relative to the case; and this record, with your joint opinion on the merits of the evidence, you will transmit to the Surveyor-General, for those States where that office still exists, for examination and decision. In States where the office of Surveyor-General has been abolished, each case, prepared as above required, will be transmitted directly to this Office.

The absence of either party at the time appointed, will not obviate the necessity of hearing the testimony offered by the party in attendance; and in all such cases your report must embrace evidence of the proper service of notice on the party failing to appear.

No case can be regarded as concluded until the rendition of a final decision by this office; neither can any entry or location be permitted until you are specially-instructed to permit the same. The rules which govern this branch of the subject deserve brief notice.

Where lands have been selected for, but not approved to the State, under the Swamp Land Law, or even where approved, when that approval has not been certified to the State authorities and your office, the successful contestant will acquire a preference right of entry. But where the lands have been approved, and certified copies of the approved list issued from this office, no such preference right of entry can be acquired; lands so situated must be restored to market, and thirty days' public notice given, before they can become again subject to private entry.

It may be proper to remark, that the public notice and these instructions, have no reference whatever to the States of Michigan and Wisconsin, where the "swamp lands" have been selected by the United States Surveyors-General from the field notes in their respective offices.

With these rules, instructions, and remarks, the subject is entrusted to your care; and it is sincerely hoped that you will lend to this Office your cordial co-operation in the endeavor to bring to a close this tedious and difficult business. A careful observance of these instructions will enable you to dispose of the cases in a brief period, and, it is hoped, in a manner satisfactory, not only to the authorities of the several States, but to parties seeking to acquire titles from the Government.

Very respectfully, your obedient servant,

THOS. A. HENDRICKS, Commissioner.

Register and Receiver at ———.

No. 577.

Public Notice.

[No. 576.]

Public notice is hereby given, that Congress having by the Act approved March 3, 1857, entitled "An act to confirm to the several States, the swamp and overflowed lands, selected under the Act of September 28, 1850, and the Act of 2d March, 1849," confirmed to the several States the swamp selections heretofore made and reported to this Office, and required that the same, so far as they remain vacant and unappropriated, and not interfered with by an actual settlement under any existing law of the United States, shall be approved and patented as soon as practicable, we are thereby precluded from entertaining objections against the approval or patenting of any lands heretofore reported as swamp and overflowed, on the ground that the same are not lands of that character; and that all proceedings under the Public Notice of December 21, 1855, and the Circular of February 11, 1856, or any other circular or instructions of this Office, authorizing the taking of testimony relative to the character of land so reported, are thereby brought to a close.

Notice is also extended to parties claiming to hold lands selected as swamp, in virtue of settlements under any existing law of the United States, to *present forthwith to the proper local officers, notice of their claims*, designating the particular tracts embraced thereby, and the law under which the right is claimed; as, *in default of such notice, their claims may be prejudiced, and, if not filed before the issue of patents to the State or States, may be barred from relief*, so far as the Executive Department is concerned.

Given under my hand at the General Land Office, in the city of Washington, on the 18th day of March, 1857.

THOS. A. HENDRICKS, Commissioner.

No. 578.

*The Swamp Land Grants of 1849 and 1850, conferred a right to the land upon the States, and the approval and patenting have relation back to the date of the grant. Certain questions as to the execution of the laws, settled.**

DEPARTMENT OF THE INTERIOR,
December 23, 1851.

I have carefully reviewed my affirmance of your decision in regard to the proper construction of the Acts of 2d March, 1849, (No. 166,) and 28th September, 1850, (No. 182,) granting to the several States of the Union the swamp and overflowed public lands within their respective limits, and am satisfied that the decision heretofore made was incorrect. The first question involved in the case is, as to the period when the grants take effect; whether it be the date of the law or the date of the approval of the selections by the Secretary; and the general law of 1850 enacts that the fee shall vest in the State, upon the issuing of a patent. In each case, the granting clause is in the first section, and the words employed, viz. "are hereby granted," seem to me to import a grant *in presenti*. They confer the right to the land, though other proceedings were necessary to perfect the title. When the

* The Act of 1849, in regard to the State of Louisiana, declares that the *fee simple* in said lands should vest in the State, upon the approval of the selections by the Secretary; and the general law of 1850 enacts that the fee shall vest in the State, upon the issuing of a patent.

selections are made and approved, or the patent issued, the title therefore becomes perfect, and has relation back to the date of the grant. The second question is, whether it is proper or competent to approve or patent portions of the land selected, as they may, from time to time be reported, or whether the whole of the lands to which a State may be entitled must first be designated. I do not conceive, that, because the language of the law respecting the lists of the lands, and the patents to the States, is in the singular, it is inconsistent with the law to approve or patent lists of the lands, as they may from time to time be submitted for that purpose; and looking to the convenience and important interests of the States, which might be seriously injured by any other course, I think this ought to be done.

To these points my attention has recently been called by the Governor of Louisiana, but they present questions involving the interests of all the States affected by the grants. The Governor of Alabama has also addressed the Department on another point, which has reference to the mode of executing the law of September, 28, 1850, and which presents the question, whether the provisions of the Acts of 2d March, 1849, and 28th September, 1850, are to be construed *in pari materia*, thereby requiring that the selections shall be made by the States, as was the case with the Louisiana grant, and not by the General Government. This question I decide in the negative.

The Act of March, 1849, has reference to Louisiana alone, and requires that the selections should be made under the direction of the Surveyor-General, at the expense of the State of Louisiana entirely, and after the Governor of that State should have informed the Secretary of the Treasury that the necessary preparations to defray those expenses had been made by the State.

The provision in the Act of September, 1850, is entirely different; for it makes it the duty of the Secretary of the Interior to make out lists and plats of the lands thereby granted, and to transmit the same to the Governors of the States; and when so requested by them, to cause patents to be issued to the States for said lands. It follows, therefore, that while the selections in Louisiana are to be made under the directions of the Surveyor-General, at the expense of the State, those in Arkansas and the other States, are to be made by the Secretary of the Interior, at the expense of the United States. As the grants are regarded as taking effect from the date of the laws making them, respectively, and as vesting the inchoate title in the States, it follows, that any subsequent sale or location of swamp or overflowed lands must be held to be illegal, and the purchase-money refunded, or a change of location ordered. Subsequent entries, however, which have been made by pre-emption, in virtue of settlements made prior to the grants, will be valid, because in those cases the right of pre-emption attached from the date of settlement, and became a vested right, which can be divested only by abandonment, or a failure in the performance of its conditions.

I have to request that you will communicate copies of this decision to the Governors of Louisiana and Alabama, (whose letters are herewith referred to you,) as soon as possible, and that you will modify your instructions, and conform your action to the views herein expressed.*

I am, &c.,

A. H. H. STUART, Secretary.

Commissioner of the General Land Office.

* The Act 2d March, 1855, (No. 275,) produced a change of policy with reference to entries made subsequent to the date of the grant of September 28, 1850.

No. 579.

Specific instruction to the Surveyor General of Arkansas relative to the selection of Swamp Lands.

GENERAL LAND OFFICE,
December 21, 1853.

Sir :—It has been suggested that the instructions heretofore issued under the Act of 28th September, 1850, “to enable the State of Arkansas and other States, to reclaim the ‘swamp lands,’ within their limits,” have been misunderstood in several particulars, and it is therefore deemed expedient to embody the views of this Office on that subject in a brief communication.

The grant is, of the swamp and overflowed lands, made unfit thereby for cultivation; and it is required by the act, “That in making out a list and plats of the land aforesaid, all legal subdivisions, the greater part of which is “wet and unfit for cultivation,” shall be included in said list and plats; but when the greater part of a subdivision is not of that character, the whole of it shall be excluded therefrom.

Forty acre lots are the smallest legal subdivisions; and hence satisfactory proof should be presented to you that the greater part of each forty acre lot claimed by the State is “wet and unfit for cultivation,” before certifying it as such under the law. Where this fact is shown by the plats and field notes, it will be regarded as conclusive, that the land is of the character enuring to the State under the law.

As a great part of the land in Arkansas was surveyed at dry seasons, much of it belonging to the State under this act, may not be represented on the field notes or plats “as wet and unfit for cultivation.” In all cases therefore, where lands are claimed by the State under this act, which are not so represented on the plats and field notes, you will require the production of satisfactory evidence that the greater part of each forty acre subdivision of the lands so claimed, is of the character specified in the act.

You should ascertain certainly, that the witnesses produced to prove this fact, are respectable and credible; that they understand the mode and manner of surveying and marking the public lands; that they have examined the surface of the land, and the marks or designations on the corner posts or trees, and require them to testify that from such examination they have ascertained and know that the greater part of each forty acre lot of the body of land in relation to which they testify is “wet and unfit for cultivation;” you will also call the attention of any such witnesses to the provisions of the Act of 3d March, 1823, and assure them that any departure from the facts in the case, on detection, will be prosecuted under that law.

If any of the lands properly enuring to the State under this law, as explained above, have heretofore been claimed by the State, and that claim rejected from any cause, such rejection cannot, and does not, impair the right of the State to such lands, and therefore, if the claim is again presented, you will examine and determine it under the foregoing instructions. Reference is here had more particularly to the lists marked “C” returned by your predecessor as lands, the claim to which by the State has been rejected, and among which it is alleged are many tracts properly belonging to the State under the act. Should you be called upon by the proper State authorities, you will examine those lists with the record evidences of survey on file in your office, and such other evidences as may be presented to you by said authorities, and, if you find it to be the case that all or any of said lands properly enure to the State under the Swamp Act, you will, of

course, so report them, as there is no limit of time in this grant, nor of anything else, except as to the character of the lands.

The lists marked "supplemental C," transmitted to this Office with your letter of 7th June, 1853, should also receive your early attention, as directed in my letter of August 15th, and of September 26, 1853. There is no question as to the character of the lands embraced in said lists; all that is required by this Office being your official certificate that the same have been examined with the plats, field notes and other evidences on file in your office; that from said examination you are fully satisfied that the greater part of every forty acre tract, or other equivalent legal subdivision of the lands embraced in said lists, is "swampy or subject to overflow," and rightfully enures to the State under said act.

When that certificate is provided, those lists will be taken up and acted upon by this Office, with a view to their approval to the States. There is no necessity for duplicating said lists, but you will be particular in making said certificate, clearly to designate the list to which it is intended to apply.

Very respectfully,

Your obedient servant,

JOHN WILSON, Commissioner.

George Milbourne, Esq., Surveyor General, Little Rock, Arkansas.

No. 580.

"Due proof," as meant in the Swamp Act of 2d March, 1855, is such as may have been taken after that upon which the selection was based.

DEPARTMENT OF THE INTERIOR,
July 7, 1855.

The subject-matter of the communication from your office, of the 20th ult., in reference to swamp land, has been duly considered, and I am of the opinion, that, under the second section of the Act of 2d March last, (No. 275,) the "due proof" therein referred to must be regarded as relating to such as shall have been taken subsequent to that upon which the selection as swamp land was based. Experience in reference to the selections, has sufficiently demonstrated that they are not entirely reliable, as to the character of the land; and where the latter is *prima facie* impeached by the purchase of the land, I think "due proof," referred to in the law, becomes as necessary as if a direct allegation had been made against the swampy character of the tract.

This principle is not to be regarded as extending to land *shown by the field notes* to be swampy, your office having, it is understood, regarded such indications as conclusive.

R. M'CLELLAND, Secretary.

Commissioner of the General Land Office.

No. 581.

Selections of Swamp Land, whether approved or not, held to be in the same condition, until the approval shall be communicated to the local land office.

DEPARTMENT OF THE INTERIOR,
September 18, 1855.

I herewith return the papers enclosed in yours of the 10th instant, on the subject of swamp land selections contested by individuals.

The paper of Judge Davis speaks of the late Commissioner's making a distinction between "lands approved, but approval not sent to Illinois, and those not yet approved." My understanding of the decision, and the principle upon which it is based, leads me to suppose that there is a misunderstanding in this respect; I can see no difference between selections approved and not approved, unless the approvals have been officially communicated to the land officers, and by their being marked upon the books or plats, placed the land in question in a different condition than when simply noted as a selection; and I do not think that the distinction should be made, until after the latter course has been taken, and the public thus advised by the proper information through the books of the land office, of the change in the character of the selection. * * * *

I must also decline authorizing any suspension of action under the existing law, to await action by Congress.

R. M'CLELLAND, Secretary.

Commissioner of the General Land Office.

No. 582.

In the State of Wisconsin, lands are determined to be Swamp or not, by the field notes of survey.

DEPARTMENT OF THE INTERIOR,
October 4, 1855.

I herewith return the papers received in yours of the 2d instant, on the appeal of John Winans, through his attorney, B. H. Baldwin, Esq. It appears that certain lands in the Menasha District, Wisconsin, indicated by the *field notes* of survey as swamp land, and in consequence thereof, reported as such by the Surveyor-General, have been applied for by Mr. Winans, and his right of entry insisted upon, on the ground that the lands are not swamp. Your office has decided, upon the principle early adopted in reference to these selections, and applied, it is believed, in all the States to which the grant of these swamp lands extended, that the *field notes of survey* were to be regarded as conclusive upon the subject, and the Department feeling no disposition to change this principle, nor interfere with the various cases already determined upon its basis, confirms the action had by you in this particular case, especially, as in the case in the same State to which you refer in your letter, the action recommended therein by your office, was adopted by the Department, with a full knowledge that it was thereby sanctioning this principle, and in effect deciding the very question now specially presented in Mr. Winans's appeal. I would, however, take occasion to state, that it might be well for your office to refer the matter to the Surveyor-General, with a view to the re-examination of his field notes, and his report of the manner of his determining therefrom the swampy charac-

ter of the particular tract specified by Mr. Winans, provided copies of such notes are not in your possession, to enable you to verify the correctness of the selections, as based thereon.

R. M'CLELLAND, Secretary.
Commissioner of the General Land Office.

No. 583.

The Swamp Grant of 2d March, 1849, covers all the swamp land in Louisiana, with the exceptions specified.

The approval of the lists, exhausts the power of the Secretary over the subject.

The Act of 1849 is not merged in that of 1850.

The term "scrip" does not refer to that issued by the State.

DEPARTMENT OF THE INTERIOR,
January 14, 1856.

I herewith return the list of swamp land selections, under Act of 2d March, 1849, (No. 166,) in the New Orleans Land District, which accompanied your letter of the 16th November last. I have given the subject connected with said list, and the various points involved and set forth in your letter, the most careful and attentive consideration, and have arrived at the following conclusions, that the Act of 2d March, 1849, covers all the swamp and overflowed lands in Louisiana, with the exception referred to in the 2d and 3d sections of said Act, to wit, such tracts as at the date of their selection, may have been "claimed or held by individuals," and such tracts fronting on rivers, creeks, bayous, watercourses, &c., which have been "surveyed into lots or tracts, under the Acts of 3d March, 1811, and 24th May, 1824;" that the approval of the list directed to be prepared under Act of 1849, exhausts the power of the Secretary of the Interior over the subject-matter, and he can no more, of his own motion, revoke or cancel any part of an approved list under that act, after it has passed from him, than a patent for land after its delivery; that the Act of 1849 is not merged in the Act of 1850, but each is to be executed according to its special tenor and provisions, the latter being merely cumulative, and embracing land which was excepted from the operation of the former; and that the term "scrip," in the Act of 2d March, 1855, does not refer to the "internal improvement warrants," "school warrants," "seminary warrants," or any other like expedient adopted by the State of Louisiana to locate, and at the same time dispose of land which she might legally claim, under the several laws of the United States, making grants to her internal improvements, schools, seminaries, &c. The Act of 2d March, 1855, (No. 275,) in authorizing the President to issue patents to purchasers or locators, where the purchases or locations interfered with swamp land selections, contemplated only such cases of individuals to whom patents would under ordinary circumstances have been issued, and of course, where the "scrip" location was based upon an instrument bearing that designation, issued by authority of the United States.

R. M'CLELLAND, Secretary.
Commissioner of the General Land Office.

No. 584.

Land selected as swamp, if it is of that character, will be approved as such, notwithstanding it may also be selected under the 8th section of Act of 4th September, 1841.

DEPARTMENT OF THE INTERIOR,
January 15, 1856.

Referring to my letter of yesterday, on the subject of the Louisiana State scrip, I am of opinion that the Act of 2d March, 1855, (No. 275,) has no applicability to the case, the subject of this communication; but that your action of February, 1855, in rejecting the selection under Act of 1841, (No. 48,) made nearly four years after the swamp land selection, was correct, provided the land was of the character contemplated by the Act of 2d March, 1849, (No. 166,) and that the only point of investigation now necessary, is, as to the swampy character of the land. If after an investigation into this question, after due notice to parties interested, you should be satisfied that the land is swamp and overflowed, and unfit for cultivation, you will submit the selection for my approval, under Act of 1849; if it is not, then the State selection under the Act of 1841, will be submitted for such approval.

R. M'CLELLAND, Secretary.

Commissioner of the General Land Office.

To a like effect as the foregoing.

DEPARTMENT OF THE INTERIOR,
January 15, 1856.

The land in question has been selected as swamp land, under the act of 28th September, 1850, (No. 182,) and if really swamp land, was granted to the State of Louisiana by said act; and the selection as internal improvement land, subsequent to the date of that law, through the medium of State internal improvement warrant, No. 610, could not affect the validity of the swamp selection. The State would not knowingly have located land already granted to it by another law.

R. M'CLELLAND, Secretary.

Commissioner of the General Land Office.

No. 585.

*Lands erroneously embraced in a private claim, if swamp, at the date of the act, would be subject to selection.
If they had been reclaimed by leveeing, this would be a bar to any right of the State.*

DEPARTMENT OF THE INTERIOR,
June 21, 1856.

The subject-matter of your letter of the 3d December last, has been fully considered, and I can see no just reason for denying the right of the State to the land really swamp and overflowed, merely because, at the passage of the Swamp Land Act of 1850, (No. 182,) it was set apart as land within the limits of an alleged private claim, and which private claim has been since determined to be invalid, and the lands restored to the mass of public lands.

The spirit and intent of the Swamp Land Act, were to grant to the States referred to therein, all the land of the particular character referred to,

within their respective limits, to which the United States had title, and which had not been reserved for some special purpose, inconsistent with the idea of any other disposition thereof, without special authority. In the matter of the reservation or setting apart certain tracts of land for these alleged private claims, it was merely a withholding them from sale or other disposition by the land officers, during the continuance of the reservation, with a view of preventing conflicts of interest, whilst the investigations were in progress, as to the *public* or *private* character of the land, and when the former was settled as its *status*, it became on the return thereof to the mass of public lands, subject to the laws which made a specific grant of all *public* lands for other purposes, according to the provisions thereof existing, at the time of such return. * * * *

Although it is therefore considered that the private claim of Dr. Villomont, would afford no bar to the selection of the land, as swamp and overflowed land, if it be really such, or was so at the date of the Act of 1850, the other point made by you, to wit, that the tracts in question, if once swamp, had, *prior* to the date of said Act, been reclaimed by leveeing, &c., is entitled to great weight, and in my opinion would be a bar to any right on the part of the State. That right did not extend to land which at the date of the law, was not of the character contemplated by the grant.

R. M'CLELLAND, Secretary.
Commissioner of the General Land Office.

No. 586.

Where an entry conflicted with a swamp selection, the land must be shown not to be swamp, before it will be patented to the purchaser. The Act of 2d March, 1855, applies only to entries made prior thereto.

DEPARTMENT OF THE INTERIOR,
November 18, 1856.

Sir:—The papers in the pre-emption case of James A. Hearick, accompanying your letter of the 12th inst., are herewith returned.

As his settlement would appear to have been made in good faith, and of a date *anterior* to the selection of the State of Illinois, under Act of 3d August, 1854, the Department confirms your decision in his favor, so far as the conflict between his entry and the aforesaid selection is concerned, but as the remaining portion of his entry conflicts with a swamp selection under Act of 1850, his right to such portion, viz., northwest quarter northwest quarter section 14, township 29, range 8, east, is dependent upon the fact, whether said tract is or is not swamp land, such as was contemplated by the Act of 28th September, 1850. If it is, then his claim cannot embrace that quarter-quarter section; if it is not, then the whole entry as made by him should be patented.

I do not regard the Act of 2d March, 1855, (No. 275,) as authorizing the issue of patents to individuals for swamp lands, except where entries had actually been made at its date.

Respectfully, your obedient servant,
R. M'CLELLAND, Secretary.
Commissioner of the General Land Office.

No. 587.

In reply to the recommendation that a former approval of certain Swamp Lands to the State of Missouri, be revoked, the Surveyor General having stricken the tracts from the lists, the following reply was made.

DEPARTMENT OF THE INTERIOR,
December 29, 1857.

In my opinion the approval and certification of my predecessor, are the completion of a duty in regard to swamp and overflowed lands, imposed on the Secretary of the Interior by said Act of September 28, 1850, and his act cannot now properly be reviewed or recalled. The State authorities have a right to call for a patent or patents pursuant to certified lists, unless fraud or mistake has been discovered. The practice of the Department of late years has not been in accordance with those views, but the confirmatory Act of 3d March, 1857, (No. 319,) introduces a change of policy and indicates to me a principle of action in such cases which I do not hesitate to adopt.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 588.

A party who surrendered his duplicate certificate of location on Swamp Land, prior to Act of 2d March, 1855, is not relieved by said Act, &c.

GENERAL LAND OFFICE,
January 2, 1858.

Sir:—An appeal having been taken by the party in the case of Charles E. Pleasants from the decision of this Office of 14th November last, I have the honor to submit it herewith, and the following facts:

On the 17th September, 1852, the Register at Clarksville, Arkansas, permitted Charles E. Pleasants to locate warrant No. 40614, Act of 1850, upon the southeast quarter southwest quarter, and the southwest quarter southeast quarter, section 8, township 8 north, range 31, west. Of these tracts, the southeast quarter southwest quarter, etc., was selected as swamp land by the State of Arkansas.

On the 19th July, 1853, the location was cancelled because of the selection of part of the land by the State, as above stated.

On the 2d March, 1855, the act was passed authorizing the issue of patents to locators and purchasers of swamp lands.

On the 11th November last, the party applied to this Office for privilege to enter these tracts, the swamp tract, under the Relief Act of 1855, above named, and the other tract, under the customary preference of a former locator. In reply, he was informed that as to the swamp tract, his entire connection with it as a locator was extinguished before the Act of 2d March, 1855, the papers showing that before that date he had surrendered his duplicate certificate of location and sold his warrant: and as to the other tract, that whatever he might have expected at the time of cancellation, no exclusive preference of entry could properly be extended now, after so long a period had elapsed without his application, during which the tract had been selected by the Fort Smith and Little Rock Railroad under the Act of 9th February, 1853.

In taking his appeal, it will be observed that the party relies chiefly on the fact that in the letter directing the cancellation, and in the letter to

him of 20th July, 1853, informing him of it, no specific mention was made by this Office of rights or privileges which he might still have after cancellation.

The appeal with this explanation is respectfully submitted.

Very respectfully, &c.,

THOS. A. HENDRICKS, Commissioner.

Hon. Jacob Thompson, Secretary of the Interior.

Affirmed by Secretary Thompson, January 6, 1858.

No. 589.

DEPARTMENT OF THE INTERIOR,
January 8, 1858.

I return herewith the papers which accompanied your report of the 27th November last, in the case of J. D. Ludlow's application of January 2, 1856, to enter certain tracts of land in the Danville district, Illinois. After careful consideration of these papers, together with the reports from your office of the 27th May and the 9th September, and the arguments of John Wilson, Esq., of Chicago, in behalf of Mr. Ludlow, I am of the opinion, that the Act of Congress of 3d March, 1857, (No. 319,) entitled an Act to confirm to the several States the swamp and overflowed lands selected under the Act of September 28, 1850, (No. 182,) is, as respects the disposition of cases on the files of your office at the date of its passage, mandatory in its terms. It confirms the claim of the States to selections of swamp and overflowed lands "heretofore made and reported to the Commissioner of the General Land Office, so far as the same remain vacant and unappropriated, and not interfered with by any actual settlement under any existing laws of the United States," and directs that they be approved and patented to the several States. The questions proper to be considered, in case of conflict arising upon lists remaining on the files of the Land Office on the 3d March, 1857, are these; 1st. Has the tract been selected in the usual manner by an authorized agent, and had the list containing it been reported in due course before the 3d March, 1857, to the Commissioner of the General Land Office, the selection not having been cancelled before that date? If the reply to this inquiry be affirmative, the next question that arises is, Was that tract vacant and unappropriated, and not interfered with by an actual settlement under existing laws of the United States at the date of the passage of said Act of 3d March, 1857? and if the tract be found vacant and unappropriated, and not interfered with by a legal settlement, it is to be approved and patented to the State according to the direction given in the Act of Congress, to the Executive branch of the Government. It is not for me to call in question the constitutionality of the Act of Congress under discussion, or to refuse obedience to a plain requirement of said Act, on account of the effect or consequences of such obedience. If it be admitted that Mr. Ludlow's application and tender were legally made, and that the lands were subject to the said application at the time, (on which points you are not satisfied,) still it is certain that said application and tender were refused by the District Officers, and the purchase was not admitted by them. The extent of right that can be acquired by a legal application and tender which has been refused, is only to a specific performance by the United States of the contract of purchase, the benefits of which the individual might be regarded

as having thereby preserved to himself. But in this case, while a contest for the legal title is pending before the Executive branch of the Government, the Legislative branch interposes, confirms the claim of one of the contestants, and orders the legal title to be given to him. This requirement of the legislative power we obey, without inquiring which contestant had the superior equity at the date of confirmation. And I cannot regard the equity which may have been acquired by an individual who has, even improperly, been refused the entry of specific tracts, though preserved to him by the prosecution of his rights on appeal, as such an appropriation of the tracts as would save them from the confirming effect of the Act of 3d March, 1857.

If Congress, in the enactment of said law, has exceeded its constitutional authority, and directed patents to be issued to the States for lands to which individuals had previously acquired a good title, the courts are open for redress of their grievances. In the specific case under consideration, it does not appear, therefore, that this Department can now permit Mr. Ludlow to enter any of the lands embraced in his memorandum of January 2, 1856, or can respect his claim for patents, or entertain any appeal from a decision of the Surveyor-General in favor of the claim of the State of Illinois to selections of swamp lands that may have been contested by him, under the regulations of the General Land Office, issued in December, 1855, and February, 1856. Your decision, adverse to further proceedings in Mr. Ludlow's case, is therefore hereby affirmed, and you will proceed in patenting the confirmed swamp selections to the several States, in accordance with the views above expressed.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 590.

Explanatory of the Instructions under the Swamp Land Grant of September 28, 1850.

GENERAL LAND OFFICE,
January 22, 1858.

Sir:—I have the honor to acknowledge the receipt of your letter of the 12th instant, in which you desire me to report whether, in my opinion, in bringing to a close the grant of September 28, 1850, (No. 182,) in cases of selections reported to this Office since the 3d March, 1857, (No. 319,) and in cases where the selections yet remain to be made, the general instructions of November, 1850, are sufficient, and should be adhered to, or should new or additional regulations be adopted.

After the adoption of the Circular of November, 1850, many questions were presented relative to the extent of the requirements in said circular, and the duty of the Surveyors-General acting in virtue thereof. And to avoid, as far as possible, any misapprehension, the Surveyor-General of Arkansas, who, it seemed, had not fully comprehended the instructions above referred to, and those thereafter issued, explaining their true intention, was addressed in a communication from this Office, dated April 8, 1854, embodying the instructions on this subject, and which were to be regarded as overruling those explanatory of the Circular of November, 1850. These instructions are applicable to all those States where the selections are made by agents appointed under State legislation, except in the States where the office of Surveyor-General does not exist. In such case, their selections are subject to the revision of this Office; and, in order that

you may fully understand the evidence required in the adjustment of the grant, I will here give you so much of said communication as relates to the subject.

"In all cases where the plats and field notes represent the lands as swampy, or subject to such overflow as to render them unfit for cultivation, they belong to the State, under the law, and will be so certified.

"Where lands are claimed by the State, under this act, which are not so represented on the plats and field notes, you will require the production of satisfactory evidence, that the greater part of each forty-acre subdivision of the lands is of the character specified in the act.

"This point has always been maintained by this Office, and if any instructions heretofore issued have been otherwise construed, it has been an error. The field notes and plats are only 'incontrovertible' when they clearly indicate the swampy character of lands, and the reason for this distinction was explained in the Circular Letter of November 21, 1850, a copy of which, accompanied by the printed instructions of that date, was transmitted to his Excellency, the Governor of Arkansas, and in which the following language was used:—'You will perceive, that by these instructions, the Surveyor-General is authorized to receive such reliable evidence, as to the character of any of these lands, as may be presented by the authorities of the State; and, as many of the lands were, probably, surveyed at dry seasons, and hence are not represented by the descriptive notes and plats as being of that character, I have supposed,' &c.

"The misapprehension now existing, doubtless arises from the fact that this Office still continues to require an examination of the lists of the State locating agents, with the field notes, &c. You will observe, however, that such examination is not regarded as final or conclusive. If said records clearly indicate the swampy character of lands, then they are incontrovertible, and your certificate of approval is based thereon; but in the event of their being silent, or even indicative of a contrary character, you have recourse, under instructions, to the evidences furnished by the State authorities, and if that be deemed by you sufficient and satisfactory, you are instructed to certify the lands to this Office. If such testimony be insufficient, you are authorized to require from the State authorities the production of such further evidence as will enable you to give the required certificate, and if not furnished, you will reject the selections.

"The evidence, as already stated, must be satisfactory to you, that the lands claimed by the State are of the character granted by the law. Where that evidence is not contained in the field notes, you should require the testimony of competent and disinterested witnesses, who should be required to testify that they understand the mode and manner of surveying and marking the public lands; that they have examined the lines and corners of the lands in relation to which they testify, and so much of the surface as to enable them to state, of their own personal knowledge, that the greater part of each forty-acre lot claimed by the State, is swampy, or subject to such overflow as to render it unfit for cultivation. On such testimony, whether presented heretofore or hereafter, if satisfactory to you, you will certify the lands to the State.

"In reference to the necessity of an examination of the surface of the land in each subdivision claimed, I would remark, that in all instances a partial, and in many, a complete examination *must* be necessary, to enable agents to certify, under oath, that 'the greater part of each forty-acre lot of the body of land in relation to which they testify, is wet and unfit for cultivation.' The only exception, of course, being in cases 'where a region of country is notoriously swampy, or subject to overflow.'"

It should be observed, that in the States of Michigan and Wisconsin, the field notes of the surveys were adopted by the authorities, as the basis upon which they would accept the grant; and the action of the Surveyors-General of those districts is confined to the indications expressed in the field notes.

In view, therefore, of the very clear and definite character of the explanatory instructions above, and further, that the authorities of the States affected by the grant, have made no objections to the instructions, I cannot perceive that any additional instructions and regulations are required. Nor does the Act of 3d March, 1857, present to me any particulars requiring a departure, or any necessity for additional instructions to be issued to those already established, relating to the selections made and reported to this Office since the passage of that act, or to those remaining to be made.

With great respect,

Your obedient servant,

THOS. A. HENDRICKS, Commissioner.

Hon. Jacob Thompson, Secretary of the Interior.

No. 591.

Land claimed as Swamp, within the six and fifteen mile limits of a Railroad grant, must be shown to be such.

DEPARTMENT OF THE INTERIOR,
August 12, 1858.

I have carefully considered your report of the 10th ultimo, and the papers therewith submitted at the instance of A. W. Bell, Esq., agent for the State of Louisiana.

The principal objection taken and urged is to that paragraph of your letter to Mr. Bell of the 1st ult., wherein you say, that the language "of the Act of 3d March, 1857, (No. 319,) renders it necessary that those lands claimed as swamp, and designated by odd numbered sections, within the six and fifteen mile limits of the grant to aid in the construction of certain railroads, should be suspended until the character of the lands shall be determined under investigation ordered by this Office, and we are thus enabled to ascertain under which grant the lands shall be certified." Understanding that you have reference in the paragraph quoted, to cases wherein the location of the road has been definitely fixed upon, and a route or line surveyed and staked off on the ground, prior to the 3d March, 1857, the date of the Act of Congress confirming certain swamp selections, I do not find any error in your decision.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 592.

A party applying informally to enter lands which had been erroneously selected as Swamp, acquired no right thereby.

DEPARTMENT OF THE INTERIOR,
August 31, 1858.

Having examined the case submitted with your report of the 24th May last, wherein Elisha T. McClure appeals from your decision in favor of the validity of the entry, per certificate, No. 11914, by Gideon S. Dickinson,

at Washington, Arkansas, I concur in the opinion expressed by you, and your said decision is accordingly hereby affirmed.

It appears that M'Clure appeared at the local office, and expressed to the Register a desire to enter the land in controversy, stating that he had the money with him to pay for it. He was informed by the officer that he could not do so, as the tract had been selected as swamp lands. This information was erroneous; and the lands were subsequently entered by Dickinson. There is no evidence or charge of any collusion or bad faith against the Register or Mr. Dickinson, nor does M'Clure show that he made formal application to purchase, and tendered the money to the Receiver; and his informal request to make the entry, did not give him a right which is superior to that of a purchaser, who subsequently made the legal application and payment for the lands. The papers in the case are now returned.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 593.

In cases where the Executive of a State demands a patent for lands as Swamp, which have been approved as such, the patent should issue, notwithstanding an adverse Railroad claim.

DEPARTMENT OF THE INTERIOR,
October 24, 1858.

Herewith I return the "Arkansas True Democrat," of August 4, 1858, submitted with your report of the 16th instant, upon a communication of E. H. Porter, Esq., of Arkansas, which had been filed in this Office on the 14th instant, and referred to you.

The newspaper above mentioned, contains a "public notice" issued by the Governor of Arkansas, and dated the 24th of July, 1858, embodying therein your instructions to the Surveyor-General of Arkansas, directing an examination to be held as to the character and description of a large number of tracts of lands, which have been selected and reported as swamp lands enuring to the State under the Act of Congress of September 28, 1850, (No. 182,) a claim to the same lands having been set up in behalf of railroad companies, under the grant to the State by Act of Congress, approved February 9, 1853, (No. 216.) In your instructions to the Surveyor-General, I do not observe that any distinction has been made between those tracts, the selection of which as swamp lands, has been approved and certified to the Governor of the State under the Act of Congress of September 28, 1850, and those tracts which have been selected and reported, but not finally certified to the Governor, as enuring to the State under the swamp land grant. Your letter of the 28th May, 1857, to M. Brayman, Esq., a copy of which you have submitted with your recent report, exhibits the same views, according to which your instructions of the 27th April, 1858, to the Surveyor General, appear to have been prepared. On consideration of this branch of the case now before me, on the appeal of E. H. Porter for himself and others, who claim that a patent shall issue to the State for said lands, under the swamp land grant, I am of the opinion that the question of the swampy character of such tracts as have been carried into approved lists, and certified to the Governor of the State as such, has already been determined affirmatively, so far as the action of this Department is concerned, and con-

tests on that point can no longer be properly entertained; but in regard to such tracts as have never been certified to the State, the character and description of the soil may still be inquired into, where a claim to the lands as dry or fit for cultivation without artificial drainage or embankment, is set up under the Act of February 9, 1853. When selections under the Act of September 28, 1850, have been approved and certified, the duty of designating the granted lands imposed by the law on this Department, has been discharged, the acts done cannot be recalled or annulled, and the State has a right to demand a patent for the tracts of land embraced in any certified list that has been delivered to the Governor.

To a demand therefor, this Department responds by issuing a patent pursuant to such certified list, except in those cases in which we are directed to issue the patent for any of the tracts, to a purchaser or purchasers from any of the United States land officers, under the requirements of the Act of March 2, 1855, (No. 275,) or of the last clause of the Act of March 3, 1857, (No. 319,) reviving and extending said Act of 2d March, 1855. It is believed that the uniform course of the decisions of this Department since my attention has been called to these questions, has been consistent with the views now expressed. The decisions of the 29th December, 1857, in the cases from Illinois and Missouri, involved the same principles, and those of the 8th of January, 28th of April, and 12th of August, 1858, are in harmony with the present decision. In all cases, therefore, where the Executive of any State demands a patent for lands which have been approved and certified to said State as enuring under the Act of September 28, 1850, the patent should be issued, notwithstanding any claim that the same tracts ought to be recognized or certified as falling to the same State under a subsequent grant for railroad purposes.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 594.

Lists of Swamp Selections regularly reported, which had been received prior to 3d March, 1857, must be regarded as selections pending at that date, except in certain cases, &c.

DEPARTMENT OF THE INTERIOR,
November 1, 1858.

Your reports of the 22d July last and 16th ultimo, and the papers therewith, in reference to the claim of the State of Arkansas, under the swamp grant of September 28, 1850, (No. 182,) and the confirmatory Act of March 3, 1857, (No. 319,) to patents for lands described in certain lists on file in the General Land Office, have been carefully considered.

From the full investigation and mature reflection bestowed on the matter in controversy, I am of the opinion that the lists of selections made by the State locating agents, and regularly forwarded by the Surveyor-General, and which had been received at your office prior to the 3d March, 1857, must be regarded as selections "made and reported" to your office, and pending at that date; excepting so far, as by the action of the Surveyor-General or of your office, taken prior to said date, particular tracts on said lists had been noted as "dry," "not swampy, or not granted by the Act of 1850." Notes on any list, having such purport, and reports from the Surveyor-General, or decisions of your office rejecting in terms, the work of a particular agent, as improperly, incorrectly, or unreliably done, I regard as specific

determinations, adverse to the claim of the State to the particular tracts thereby affected; by which determinations, the lists in your office have been purged and reduced in a corresponding degree. For the other tracts on such lists, patents should issue to the State, except in cases where the lands have been otherwise appropriated, or the claim of the State is interfered with by an actual settlement, made under law prior to the date of the Act of 3d March, 1857, or where under that Act, or the Act of March 2, 1855, we are directed to issue the patent to a purchaser from the United States.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 595.

Where Lands are claimed under a Swamp and a Railroad Grant, either of which would be good if the other were out of the way, the elder one must prevail.

The Swamp Act of 28th September, 1850, is a present grant.

The General Description of all Swamp and Overflowed Lands is definite enough for notice.

ATTORNEY-GENERAL'S OFFICE,
November 10, 1858.

Sir:—By the Act of September 28, 1850, Congress granted to the State of Arkansas all the swamp and overflowed lands rendered unfit for cultivation thereby within her limits, for certain purposes mentioned in the Act. On the 3d October, 1856, the Surveyor-General made a report, which was filed in the General Land Office, designating the overflowed lands which had been selected by the State under the grant. On the 9th February, 1853, Congress made another grant to the States of Arkansas and Missouri, to aid in the construction of a railroad; and under this grant, a part of the lands previously granted to the State of Arkansas under the denomination of swamp lands, was included, and is now claimed for the use of the railroad. The question upon which you ask my advice requires a comparison of the two laws, and the acts done under them, so as to ascertain which of these is the better title. Does the State take it under the first grant, or was that grant so imperfect, that the subsequent disposition of it by Congress passes the right to the later grantee?

Where there is a conflict between two titles derived from the same source, either of which would be good, if the other were out of the way, the elder one must always prevail, *prior in tempore, potior est in jure*.

This difficulty, therefore, is solved, if the mere grant, as you call it, gave the State a right to the land from the day of its date. That it did so, there can be no doubt. In an opinion which I sent you on the 7th of June, 1857, concerning one of the same laws now under consideration, I said that a grant by Congress does of itself, *proprio vigore*, pass to the grantee all the estate which the United States had in the subject-matter of the grant, except what is expressly excepted. I refer you to that opinion for the reasons and authorities upon which the principle is grounded. It is not necessary that the patent should issue before the title vests in the State under the Act of 1850. The Act of Congress was itself a present grant, wanting nothing but a definition of boundaries to make it perfect; and to attain that object, the Secretary of the Interior was directed to make out an accurate list and plat of the lands, and cause a patent to be issued there-

for. But when a party is authorized to demand a patent for land, his title is vested as much as if he had the patent itself, which is but evidence of his title. The authority given to the State legislature to dispose of the lands upon the patent, does not make the grantee less the exclusive owner of them than she would be if those words were omitted. The object of that clause undoubtedly was, to prevent the legislature of the State from a premature interference with the lands, before they were so designated as to preclude mistake and confusion.

The subsequent grant by Congress to the State for the use of the railroad, could not have been intended to take away from the State the rights previously vested in her for other purposes. We are never to impute such intentions to the legislative department, where any other construction can be given to the words of a statute. Even if we could suppose that to be the meaning of Congress in this case, it would avail nothing to the later grantee, since in all cases of conveyance, a later grant must yield to an earlier. It has often happened that public grants, by mistake, have been so described in general words, that when they come to be located, they are found to lie afoul of each other. I believe it has never been thought that where this happens, they are not to be treated like inconsistent deeds made by private persons. There are cases in which grants are made under descriptions so vague and indefinite, that neither the grantee nor any other person can tell their location or boundaries, until the grantee does some act which locates and defines them. In such case, if another right which is strictly defined intervenes, the first grantee may lose what he would have been entitled to, if his own grant had been descriptive and definite. But that principle does not apply here, because the general description of all swamp and overflowed lands within the limits of Arkansas is definite enough for purposes of notice. Besides, the grant for the railroad was originally much more indefinite than the other, requiring the location of the road to be made before the locality of the lands could be known at all. The State proceeded to make her selection, and to fix the location of the lands definitely, before the railroad did any such thing with its grant. The State, therefore, has the oldest and the most definite title, and its lands were accurately located, and their boundaries particularly defined agreeably to the Act of Congress, before the same thing was done by the other claimants. The oldest title, the most definite, and the first location, will surely give her priority and preference over another grantee subsequent in title, less definite in the terms of the grant, and later in location.

I am, very respectfully, &c.,

J. S. BLACK.

Hon. Jacob Thompson, Secretary of the Interior, Washington, D. C.

No. 596.

Lands not Swamp, but which had been selected as such, if previously appropriated by a Railroad Grant, are not confirmed by the Act of 3d March, 1857.

Where lands in the limits of a Railroad Grant, though not Swamp or overflowed, were reported prior to the final location of the road, and said road was not finally located until after 3d March, 1857, they were confirmed.

GENERAL LAND OFFICE,
December 2, 1858.

Sir:—Referring to your communication of the 19th inst., enclosing the opinion of the Attorney-General of the United States on the question of

conflict of interest between the Swamp Grant of September 28, 1850, (No. 182,) and the Railroad Grant of February 9, 1853, to the States of Arkansas and Missouri, I have the honor to state, that in view of said opinion a question of much magnitude and importance has arisen, which I present for your consideration and decision.

The grant of September 28, 1850, is of "the whole of those swamp and overflowed lands, made unfit thereby for cultivation."

The grant of February 9, 1853, (No. 216,) is of "every alternate section of land designated by even numbers, for six sections in width, on each side of said road and branches," with the right of indemnity within the limits of fifteen miles, for lands of the granted sections disposed of by the United States.

Under the Public Notice of December 21, 1855, the railroad companies in Arkansas filed protests against the approval, as swamp, of many tracts *within the limits of that grant*, alleging that they were not of the character of lands granted by the Act of 1850.

The Act of 3d March, 1857, (No. 319,) confirmed the selections of swamp and overflowed lands, then made and reported to the Commissioner of the General Land Office, "so far as the same shall remain vacant and *unappropriated*, and not interfered with by an actual settlement under any existing law of the United States."

The routes of the roads in Arkansas were definitely fixed prior to the passage of that act.

It is held, that all contests by individuals, undetermined at that date, except in the case of settlers, are brought to a close.

This law expressly excepting from confirmation lands *appropriated* by Congress for other purposes, instructions have been issued directing an investigation into the character of the lands described in the protests above referred to.

It will be observed, that in these cases the railroad companies had protested against the recognition of the claim of the State, under the swamp grant prior to the Act of 3d March, 1857.

The question now arises, whether these contests are terminated by the opinion of the Attorney-General of the 10th inst.

My opinion is, that they are not, for the reason that the grant of 1850 was, by description, "swamp and overflowed," and that no title vested in the State under it, except for lands of that description; that the Railroad Grant of 1853 is of lands, (not disposed of,) in place, and that it took hold of all *dry lands not subject to overflow*, falling within the granted boundaries, and they thereby became *appropriated*, notwithstanding the State may have wrongfully selected and reported them as swamp or overflowed, prior to the location of the roads, and that upon the *final location* of the roads, such lands became disposed of, (see Opinion of Attorney-General of June 7, 1857,) and are not confirmed by the Act of 3d March, 1857.

The question, in a modified form, will probably arise in other States. In 1856, grants were made to Iowa and other States for railroad purposes. The routes of some of the roads were definitely fixed prior to the passage of the Confirmatory Act of 3d March, 1857, and of some of them subsequent thereto.

I have the honor to ask your decision on the following points:—

1st. Where lands, within the limits and description of a railroad grant, which were not in fact *swamp or overflowed*, but were selected and reported as such, prior to the final location of the railroad, and said road became located prior to the Act of 3d March, 1857, did that act confirm such selections as unappropriated lands, and must the lands be patented to the State

under the swamp grant? or, on the other hand, did they become appropriated by the railroad grant, and the final location of the road; and shall the investigation proceed upon the contests made by the railroad companies, with a view to ascertain the real character of the lands, whether they be swamp or dry?

Upon this question, I have expressed my opinion above.

2d. Where lands, within the limits and description of a railroad grant, which were not in fact *swamp or overflowed*, but were selected as such, and reported to the General Land Office prior to the final location of the railroad, and said road did not become finally located until after the passage of the Act of 3d March, 1857, did that act confirm such selections, and must they be patented to the State, under the swamp grant? or, on the other hand, did they become appropriated upon the passage of the railroad grant; and shall the investigation proceed upon any contests that may be made by the railroad companies, with the view to ascertain the real character of the lands?

Upon this question my opinion is, that the Act of 3d March, 1857, did confirm the selections.

With great respect,

Your obedient servant,

THOS. A. HENDRICKS, Commissioner.

Hon. Jacob Thompson, Secretary of the Interior.

The following is the reply to the foregoing.

DEPARTMENT OF THE INTERIOR,
Washington, December 10, 1858.

Sir:—Having carefully perused your report of the 2d instant, communicating your views upon certain questions arising in the administration, by your office, of the swamp and railroad grants, I have to inform you that I fully concur in the opinions expressed by you.

They are regarded as having been sustained by my Decisions of 29th December, 1857, in the case from Missouri; of 8th January, 1858, in the case from Illinois; and of 28th April, 12th August, and 23d November last, in cases from the State of Louisiana; and as being in harmony with the Opinions of the Attorney-General of the United States, of June 7, 1857, and November 10, 1858, and will therefore be the basis of your official action.

Very respectfully, your obedient servant,

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 597.

Where lands which have been sold by the State of California as Swamp, are shown by the field notes to be of that character, they should not be offered at public sale.

DEPARTMENT OF THE INTERIOR,
January 17, 1859.

Having considered your report of the 6th instant, upon the communication of the Governor of California, suggesting that certain lands, which are advertised to be offered for sale by the United States land officers, on the

14th proximo, be withheld from the sale, because they have heretofore been sold by the State as swamp lands, I have to state, that if any of the lands so sold by the State, are shown by the field notes of official survey, to be of the description granted, by the Act of Congress of the 28th September, 1850, they should not be offered by the Register and Receiver at public sale. I am also willing that the United States Surveyor-General, receive testimony as to the swampy character of particular tracts, claimed under purchases from the State, and if that evidence establishes, *prima facie*, that the lands are swamp and overflowed, that he should so advise the district land officers, and direct them to suspend the sale of such tracts; but I do not find authority of law for ordering the reservation from sale of all lands that the State of California may have sold, when there is nothing on our official records, authoritatively indicating that the lands have been granted to that State. The papers which accompanied your report are now returned, and you will be pleased to give instructions to the Surveyor-General immediately, who will take the most prompt measures practicable, to carry out the views above expressed.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 598.

Where lands are claimed by a State, under both the Swamp and Internal Improvement Grant of 4th September, 1841, it must be found whether the selection under the latter had been made and certified prior to the Act of September 28, 1850; if so, the internal improvement selections will be approved.

DEPARTMENT OF THE INTERIOR,
April 20, 1859.

Herewith please find the lists of certain lands in the Newnansville District, Florida, which were submitted with your report of the 15th instant.

In respect to the lists C and D, I have adopted your recommendation, and affixed my signature to them.

List E, is a list of lands, which have been selected as enuring to the State, under the swamp grant of September 28, 1850, but had before the date of the swamp selection, been also selected for the State of Florida, as a part of five hundred thousand acres, granted for internal improvement, by the Act of September 4, 1841. If the selection as a part of the grant, by the Act of 1841, was made and certified to your office, or the local land office, prior to the 28th September, 1850, I will on being so advised, approve the selections. If, however, such selection has been made since the grant of September 28, 1850, the internal improvement selections will be suspended, until the swamp selection is passed upon, and then such as are rejected as swamp lands, may be submitted for approval, as selections under the Act of September 4, 1841.

J. THOMPSON, Secretary.

Commissioner of the General land Office.

No. 599.

The Department having recognized the title of the State, under a Railroad grant, the selection of the same land as Swamp must be suspended, until the true description of the land can be ascertained.

DEPARTMENT OF THE INTERIOR,
Washington, May 21, 1859.

Sir :—Your report of the 2d instant, in the matter of the appeal of N. P. Causin, Esq., as attorney for purchasers from the State of Missouri, of certain tracts, selected as enuring to that State, under the grant by the Act of Congress of September 28, 1850, is before me, and after consideration of the same, in connection with your report of the 6th April last, my conclusions are as follows :

This Department having recognized fully the title of the State under the railroad grant, to the particular tracts in question, before the Surveyor-General had reported them under the Swamp grant of September 28, 1850, their selection as swamp lands, is properly suspended at present.

I think that the proper course for you to pursue under the circumstances, will be, to notify the Governor of the State of the condition of the matter, and advise him that on the production of decisive evidence that the tracts, or any of them, are of the description of lands granted by the Act of Congress of September 28, 1850, they will be regarded in the class excepted from approval, by my predecessor of the 9th May, 1854, a prior legal right under the swamp grant, having vested before the approval as railroad tracts, was made. In the event of full proof that the tracts, or any of them, were on the 28th September 1850, within the description of lands granted by the act of that date, they will hereafter be submitted for approval, as swamp selections, and confirmed and patented accordingly.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 600.

Where lands selected as Swamp, in Arkansas, and approved, are shown to have been dry at the date of the Swamp Grant, they should be omitted from the patent to the State.

DEPARTMENT OF THE INTERIOR,
Washington, June 25, 1859.

Sir :—The list which accompanied your report of the 17th instant, is herewith returned. It appears that the lands therein described, pending an investigation of the fact of their being swampy or otherwise, under instructions of your office, of April, 1858, were inadvertently included in lists which have been reported to me, for approval, and approved. The investigation having been completed and reported to your office, you now find that the tracts were in fact dry, on the 28th September, 1850.

Under these circumstances, the proper course to pursue, I think, will be to omit these lands from the patents, to be issued on confirmed swamp lists, Nos. 3 and 4, in the Little Rock District, and to inform the Governor of the State fully, in respect to the mistake made, advising him that the lands will be listed as falling under the grant for railroad purposes, unless he should present paramount objections to that course.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 601.

Where a tract of land has been approved and certified as Swamp, its swampy character must be regarded as being determined affirmatively. The listing of lands as Swamp, will not prevent the issuance of a patent to a Pre-emptor who has an older title.

DEPARTMENT OF THE INTERIOR,
Washington, July 22, 1859.

Sir:—In returning the papers which were submitted, by request of Hugh Short, Esq., with your letter of the 20th inst., I remark, that when a tract has been selected, and has been approved and certified as a swamp tract, enuring under the Act of 2d March, 1849, to the State of Louisiana, the fact of the land being of a swampy description must be regarded by us as affirmatively determined, and not to be drawn in question, or subject to a different adjudication.

In this case, if Benbrook, or his heirs, had a valid claim to the land, which had vested prior to the date of the swamp grant, the tract or tracts were not of those granted by that law, but were specially excepted from the grant; and as the approvals of selections are uniformly made, subject to valid legal rights to any of the tracts, the lands in controversy would be of the class excepted from approval. The listing of the lands, as part of the swamp grant, will not be an insuperable obstacle to the issuance of a patent on the pre-emption entry, if the pre-emption is the older and better title. Should the decision of your office be in favor of the pre-emption, as the superior title, the Governor of Louisiana should immediately be informed of your decision, and the position of the Department in regard to the case.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 602.

In cases where lands are claimed under both Swamp and Railroad Grants, if the title under the latter had not vested prior to March 3, 1857, they would pass under the Swamp Grant.

DEPARTMENT OF THE INTERIOR,
Washington, July 23, 1859.

Sir:—Your report of the 15th instant, has called my attention to the fact that affidavits were on file in the General Land Office, on the 3d March, 1857, which had been presented under Circulars of the 21st December, 1855, and 11th February, 1856, in which it is represented that certain tracts of land were dry, which had been selected as swamp lands, under the grant of 28th September, 1850, and carried upon lists which had been regularly reported, and were on file in your office, on said 3d day of March, 1857. These tracts are also of the legal designation of lands which would fall to the State of Iowa, under grants for railroad purposes. The confirmation of the selection as swamp lands, has for some time been suspended, and the question arises, what course shall be adopted in the adjustment of the two grants, as regards these particular tracts of land.

It is a very obvious remark, but quite important in this connection, that the State is entitled to all these tracts, under one or the other of the two grants. The only interest or object which the United States and its officers can have, is a faithful administration of the laws making the grants. This we shall not accomplish by delay in administering one, because of the existence

of the other. Should the adjustment be delayed for investigations to be made, we could only expect thereby to avoid a few mistakes, which, if made, we may assume, would not seriously injure any one; and to the State and the United States, the delay would be a greater detriment than any number of errors that can occur.

The Act of Congress of the 3d March, 1857, confirmed all selections under the swamp grant, which had been regularly reported, and were on file in your office at that date, so far as the lands remained vacant and unappropriated; and we need not now inquire whether lands so selected and reported, were or were not swampy, on the 28th September, 1850, if they remained vacant and unappropriated on the 3d March, 1857. If, therefore, the title of the State, under the grants for railroads, to the particular tracts now under discussion, had not vested prior to the 3d March, 1857, I think Congress has decided that the land should pass under the swamp grant; and with cases of that kind, you may at once proceed with the certification and patenting of the tracts.

If, however, the title, under the grants for constructing railroads, to any of the tracts under discussion, had vested prior to 3d March, 1857, such tracts were appropriated, and they should not be carried upon the swamp lists, unless they were *in fact* swamp lands, on the 28th September, 1850. The question of the description of such tracts,—whether swamp and overflowed or otherwise, at the date of the swamp grant,—you may examine and determine, upon the record, papers, and affidavits now on file; and if you find that they were of the description of the lands granted by the Act of 28th September, 1850, you will so report; but if the record and evidence before you will not warrant that decision, the selection as swamp may at once be rejected, and the lands may be carried upon the lists of lands enuring under the grants for constructing railroads, and the title of the State, under those grants, fully recognized.

The above remarks, it is believed, are entirely consistent with the position the Department has maintained since the 3d March, 1857, and are merely in exemplification of the views embodied in my letter to you of the 15th April last.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 603.

The State authorities of Wisconsin having adopted the field notes of survey as determining whether lands were Swamp or not, the Secretary declines ordering a change in that respect.

DEPARTMENT OF THE INTERIOR,
Washington, August 1, 1859.

Sir:—Concurring in the views of your office, relative to the survey of islands in the Mississippi and Wisconsin rivers, which are claimed to be of the description of lands granted to the State of Wisconsin by the Act of Congress, approved September 28, 1850, and in your opinion unfavorable to a change of policy in setting apart the lands which enure to that State, under that act, I deem it proper to add a few observations in reply to the letter of Governor Randall of the 2d May last, submitted with your report of the 6th ultimo.

Since the grant was made, and up to the present time, the field notes of the public surveys have been the basis of the selections, and on that basis

more than one million six hundred thousand acres have been selected and approved to the State.

The Act of Congress imposed the duty of setting apart these lands upon the Secretary of the Interior, and in November, 1850, two plans for the performance of this duty were suggested, and the Governors of the several States were requested to inform the Department which plan they deemed preferable, so far as the interests of their respective States were concerned.

The Governor of Wisconsin, in June, 1851, after mature deliberation and consideration of the best interests of the State, advised the Land Office that Wisconsin would be willing to adopt the field notes of the United States surveys as the basis of setting apart the granted lands.

The present Governor, however, in a communication of the 2d May last, says that the surveys in Wisconsin previous to 1850, had not been very accurate, and all the lands that ought to be listed as part of the grant, were not by the field notes of those surveys, shown to be unfit for cultivation without artificial drainage or embankments.

He therefore expresses the opinion that Wisconsin, out of the lands that had been surveyed and remained unsold on the 28th September, 1850, within her limits, is entitled to "a further amount of lands;" and he suggests a re-examination and resurvey, with a view of ascertaining what lands have been erroneously omitted from the lists of swamp lands, that they may be hereafter certified to the State.

The most serious objection to this course is, that it would unsettle everything that has been done. The re-examination would necessarily extend to the lands heretofore certified and patented, and the State would have to restore to the United States such tracts as may have been improperly listed as enuring to her; for it could not be asked that all errors and inaccuracies should be corrected in favor of the State, but none corrected against her.

The inevitable results would be, delay in administering the grant, dissatisfaction and litigation among the citizens of the State, and appeals to the legislature for relief or damages.

A second consideration is this: our predecessors in office, both on the part of the State and the United States, in view of all the facts existing at the time, concluded that the method of adjustment adopted, was the most just and fair, and dictated by the best interests of Wisconsin. As I view the matter, they stood in just the same relation to the subject as we do; and I should hesitate to adopt any other plan than the one entered upon by them, even if my opinion did not agree with that which they entertained. What rendered their action peculiarly appropriate was the consideration of the fact, that the best knowledge which Congress possessed in 1850, of the swamp and overflowed lands unfit for cultivation, surveyed and then remaining unsold, may be presumed to have been derived from those official records, the field notes of survey; and the tracts thereby shown to be unfit for cultivation, at that time, may be regarded as those which, especially, Congress intended to grant.

We will bear in mind that Governor Randall, alluding to surveys which have been made and returned since 1850, states, that they "have been made with more care, and are more satisfactory," thus waiving any complaint against the plan of selection that has been pursued, in respect to its operation in those districts when the surveys have been made since 1850.

As it thus appears that the plan of administering the swamp grant in Wisconsin, was fully endorsed by the State officers at its inception as just and beneficial; as no serious complaint has arisen during a period of nearly nine years, and as its present and future operation are not the subject of any complaint, I think we have a very strong case against a change. It

may be regarded as a matter of congratulation that the plan which was adopted, has worked so well, and with such concurrent satisfaction to the officers of the State and the United States; thus indicating its wisdom and fairness, and exhibiting a history so creditable to its merits, that we could not hope to make a change for the better, by the substitution of any other.

The papers which you enclosed are now returned to your office.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

TITLE X.

Military Bounty Land Warrants.

LOCATION OF BOUNTY LAND WARRANTS.

[When a warrantee presents a warrant for location in his own name, it must be accompanied by his affidavit of identity, (see Form No. 1,) and also a written application to locate his warrant upon the tract of land he desires. (Blanks for which are furnished to each local Office.)

The certificate of location is dated and signed by the local officers and attached to the warrant, and a duplicate certificate of location, issued and signed by the Register and delivered to the locator. If the warrant is presented for location by an agent of the warrantee, the warrant must be accompanied by a power of attorney duly executed, and the identity of the warrantee established by the certificate of the proper officer. (See Forms Nos. 2 and 3.) If an assignee of a warrant presents one for location, the assignment must be in the form presented herein, and the location fee must also be paid upon presentation of the warrant for location. Warrants

The Commissioner of Pensions cannot lawfully issue more than one warrant on a soldier's claim for bounty lands.—(Opinion of Att.-Gen., June 28, 1851, vol. 5, p. 387.)

If, through mistake or fraud, he shall issue more than one warrant upon the same claim, he will have transcended his authority, and performed an act having no legal validity.—*Ib.*

¶ If the government issue a land warrant for a claim on which it had granted a former one, the circumstance does not deprive the first warrantee of his rights.—(Opinion, March 22, 1815, vol. 5, p. 702.)

A land warrant fraudulently obtained from the Commissioner of Pensions in the name of a person deceased without heirs or widow, or of a fictitious person, is a mere nullity, incapable of lawful assignment, and may be rejected or cancelled by the Commissioner of public lands.—(Opinion, March 15, 1856, vol. 7, p. 657.)

But when the Commissioner has duly issued a military land warrant, valid on its face, to a person *in esse*, and capable of assigning, and such warrant has passed by lawful assignment to a *bona fide* purchaser for value without notice, the government cannot cancel such warrant on the ground that the Commissioner issued it in misapprehension, or on imperfect or false evidence.—*Ib.*

The regulation, established by the Commissioner of the General Land Office, requiring holders of land warrants to make affidavit that there is no settlement on the land intended to be located, is inconsistent with the Act of 11th February, 1847, and void.—(Opinion, Aug. 7, 1852, vol. 5, p. 609.)

Bounty Land Locations.

A question was raised as to the receivability of an *assigned* land warrant, in which the transfer was acknowledged before *one land office*, and presented at a *different* one. This Office on the 23d ultimo replied, referring to the circular of the 3d May, 1855, page 7, excepting the Register and Receiver from the rule requiring certificates of official character, and held as follows:—but this is to be understood as embracing only cases of acknowledgments taken before the Register and Receiver of the local office at which such assignments may be presented, for the plain reason, that other officers are not

can be located through the General Land Office, by enclosing them and the fees required by law, to the Commissioner.

The location is noted on the plat immediately, by the local land officers, and no location should be allowed without examining the plats to ascertain whether or not the tract proposed to be located has been previously disposed of. The location, in every case, is posted in the tract books on the day on which it was made. An abstract is then made of all locations for each class of warrants, to wit, Acts 1842, 1847, 1850, 1852, and 1855, also a series of Register's and Receiver's numbers for each class of warrants. The locations are then entered in the abstracts in the order in which they were made, and the proper Register's and Receiver's numbers are entered in the proper column, and also on the certificates of location; and at the end of the month the abstracts duly certified, together with the warrants received for location during the month, are mailed to the address of the Commissioner of the General Land Office, Washington, District of Columbia.

After these returns are received at the General Land Office, they are examined as to the correctness of the entry of the locations on the abstracts, and the regularity of the assignments of the warrants. If the assignment of any warrant is irregular and illegal, the location is marked "suspended," and then the locations are posted in the tract books, and all such locations as conflict with prior dispositions of the land are marked suspended for that reason. After all locations and entries up to the end of the month have been posted, all locations to which no objections appear are patented, and those warrants which have been suspended, are returned to the local offices for correction of assignments, or return to the locators, if the locations have been cancelled.

After the patents have been issued, signed and sealed, they are sent to

in possession of the means of testing the genuineness of the signatures of the officers of other districts. It follows, therefore, that where an assignment acknowledged before one land officer, is proposed to be presented at another and different office, it will be necessary to obtain a further certificate of acknowledgment before an officer, the evidence of whose character, certified under seal, shall accompany the assignment.—(Report of Chief Clerk of the Land Office for November, 1855.)

Compensation of Land Officers.

As inquiry has been made in regard to the amount of commissions to which Registers and Receivers of Land Offices are entitled on the value of land warrants, issued and located under the Act 3d March, 1855, a circular letter was addressed, on the 26th January, 1856, to such of the Registers and Receivers as come under the general legislation on the subject, apprising them of the decision of the Department, that Registers and Receivers are entitled to no greater compensation for their services in any one official year than \$500 as salary, and \$2500 as commissions; that any sum they may receive as fees for locating land warrants, over and above the amount sufficient to entitle them to the maximum commissions above mentioned, for all services incident to their offices, they are required to deposit to the credit of the Treasurer of the United States. This restriction, as to maximum compensation, applies to services under all other Acts of Congress.

They were required to make an entry of this decision accordingly, on their records, and immediately acknowledge the receipt of it.—(Report of Chief Clerk of Land Office for January, 1856.)

The Supreme Court of Alabama has decided, that the proviso to the Act of Congress of 1847, conferring bounty lands on soldiers, was intended to protect not only pre-emption claimants, but also those who were in the actual settlement and cultivation of public lands without a pre-emption right.—(*Cruise v. Riddle*, 21 Ala. Reports, 791.)

Land-warrants on Pre-emptions.

More than one warrant may be located on a pre-emption claim, but each warrant must be located on a specific subdivision.—(Commissioner's letter to the Secretary of the Interior, June 12, 1858, and reply of June 16, 1858.)

the local office at which the location was made, for delivery, if the office is open; if it has been closed, then they are retained in the General Land Office and sent direct to the patentees upon the receipt of the duplicate certificates of location. If the duplicate certificate is sent to the General Land Office before the patent is sent to the local office, the patent will be sent to the patentee.

If a duplicate certificate of location, is duly assigned and received at the General Land Office before the issue of the patent, the patent will be issued in the name of the assignee of the locator.]

No. 604.

Circular to the Registers and Receivers of the United States Land Offices.

GENERAL LAND OFFICE,
June 3, 1847.

Gentlemen:—By the 9th section of the Act of Congress, approved 11th February, 1847, entitled “An act to raise for a limited time an additional military force and for other purposes, the (Interior) War Department is authorized to issue for military services, certificates or warrants, in two classes of cases, one of one hundred and sixty acres each, the other of forty acres each.

Herewith you will receive a document containing a form of the *warrant certificate* issued by the War Department, a copy of the 9th section of said act, and some suggestions in relation to locating, accompanied by a form of *affidavit* and of an *assignment*.

The law authorizes these certificates or warrants to be located at any land office of the United States, and in order to facilitate the reception and proper location of them, I have to draw your attention to the following:

1st. The location of the certificate or warrant must be made on lands “*subject to private entry*,” according to “*legal subdivisions*,” and “*in one body*.”

In the one hundred and sixty acre warrants, the party may take either a whole “*quarter section*” of *that area*, or *two adjoining* eighty acre tracts, or may even select the smallest legal subdivisions, if in “*one body*,” and the selection does not exceed one hundred and sixty acres. The selection always to be in as compact a form as possible.

2d. The law expressly forbids the location of a warrant upon any lands to which there shall be “*a pre-emption right*,” or upon *which there shall be an actual settlement and cultivation*.”

3d. No location must be allowed on any lands *which are reserved or withdrawn from market for any purpose whatever*, nor is the location admissible upon any lands where the minimum is greater than \$1 25* per acre, as the law intends to confine the location to the general class of *unclaimed, unsettled public lands*, subject to *private entry* at the *usual minimum*.

4th. On the presentation of the warrant certificate, you will note on it the date when, and from whom received. If presented by an *assignee*, you will see that the assignment bears date *subsequent* to the warrant,—that it is substantially in form, and duly acknowledged—where not acknowledged before an officer, *using a seal*, or before the Register or Receiver, a certifi-

* \$2 50, may now be located. See circular August 28, 1848, and circular 23d March, 1852.

cate of magistracy, under seal, must be produced. If presented by an attorney of the warrantee or assignee—his power of attorney must be filed, properly authenticated, and such power should always be sent on with the papers, and on the party designating the land wanted in satisfaction of said warrant, you will examine the tract and plat books, and if the tract is of the class authorized to be located, no adverse right is ascertained, and an affidavit is filed that, at the time of selection, there was not “an actual settlement and cultivation upon any part of the said land,” &c., (see form of affidavit annexed, A,) you will require the party to endorse on the warrant certificate, (B,) an application to the following effect:—

*I, A. B., of —, hereby locate the — containing — acres, in satisfaction of the warrant herein mentioned.

(Signed) A. B.,
with date.

To be attested by the Register and Receiver.

(A) LAND WARRANT CERTIFICATE, NO. —.

I, —, being desirous of locating the —, quarter of section No. — in township No. —, of range No. —, in the district of lands subject to sale at the land office at —, with the attached military land warrant certificate No. —, issued under the provisions of the ninth section of the Act of Congress, approved February 11, 1847, do solemnly —, that from my own knowledge of the fact, after actual inspection of the said tract of land, on or about the — day of —, A. D. 18—, there was not at that time an actual settlement and cultivation upon any part of said land, — nor was there any person or persons residing upon it; —. And I do verily believe that there is no actual settlement and cultivation —, or any person or persons residing upon any part of said land at this time.

Subscribed and sworn to before me, this — day of —, A. D. 18—. —, Register of the Land Office.

I request my patent to be sent to —.

If before the expiration of thirty days from the date, a pre-emption declaration or other prior claim is ascertained to exist to the land, you will apprise the party, so that a new selection may be made. If no such prior right appears, you will append, under the application of the party, your certificate to the following effect:

(B) LAND WARRANT, NO. —.

Register and Receiver's, No. —.

LAND OFFICE —,
—, 18—.

We hereby certify, That the attached military bounty land warrant, No. —, was on this day received at this Office, from —, of — county, State of —. —, Register.
—, Receiver.

I, —, of — county, State of —, hereby locate the —, of section No. —, in township No. —, of range No. —, in the district

* For locating warrants, see circular, March 31, 1851, (No. 608.) For assignments, &c., see circulars, March 23, 1852, (No. 609,) October 17, 1853, (No. 613,) May 3, 1855, (No. 615,) and November 1, 1858, (No. 617.)

of lands subject to sale at the land office at —, containing — acres, in satisfaction of the attached warrant numbered —.

Witness my hand this — day of —, A. D. 18—.

Attest:

—, Register.

—, Receiver.

LAND OFFICE —,
—, 18—.

We hereby certify that the above location is correct, being in accordance with law and instructions.

—, Receiver.

—, Register.

And you will then make permanent entries on your books, to show how the lands have been disposed of.

5th. At the close of each month, *succeeding the consummation of one or more locations*, you will make a return to the general land office of the warrant certificates, with the accompanying evidence of such location.

The law allows no commissions on this business, and as it has no connection whatever with the sales, you will transmit with the located warrant certificates, a separate monthly return, according to the form (B) herewith.

Very respectfully, your obedient servant,

—, Commissioner.

NOTE.—The Secretary of the Treasury has decided that a soldier may use his own warrant in payment for land to which he claims a pre-emption in his own right—but such a warrant cannot be used by an assignee for such a purpose.

No. 605.

GENERAL LAND OFFICE,
October 1, 1847.

Gentlemen:—In view of recent inquiries at this Office, the following is added to the Circular of 3d June, 1847, in regard to locating military warrants under the Act of 11th February, 1847: (No. 126.)

5th. A tract of a greater area than the quantity in the warrant, may be located, if the excess is paid for. In such cases, the Receiver will issue his receipt for — dollars, in full for — acres of the — quarter of section —, township —, range —, being an excess in said tract over the area located in virtue of military land warrant No. —, in favor of —.

The receipt must be numbered and accounted for as usual, but no certificate of purchase of a corresponding number must be issued by the Register for the excess.

The endorsement on the warrant, as required under the 4th section of the original Circular, should be adapted to this class of cases, as follows: I, A. B., of —, hereby locate the —, containing — acres in satisfaction of the warrant herein mentioned, having paid for the excess as per Receiver's receipt, No. —, dated —.

(Signed) A. B., with date.

Very respectfully,

Your obedient servant,

—, Commissioner.

To the United States Register and Receiver.

No. 606.

Circular to the Registers and Receivers of the United States Land Offices.

April 1, 1848.

Gentlemen:—The location of bounty land warrants issued under the 9th section of the Act of 11th February, 1847, (No. 126,) has become the subject of so many inquiries from the officers of the local land offices, and from private individuals, that to obviate the necessity of further correspondence, it is deemed advisable to issue the annexed additional circular of instruction in reference to the several points of inquiry:

1st. The warrant certificates issued under the 9th section of the Act of 11th February, 1847, by the decision of the Secretary of the Treasury, may be located by the soldiers themselves upon any tracts of land which they may be entitled to enter at the land offices under the *general pre-emption law*, whether the same has or has not been offered at public sale. This decision does not embrace any of the public lands which have been reserved for any special purpose, or any which are subject to pre-emption under special laws, or any the price of which exceeds the minimum of \$1 25 per acre. You will, therefore, upon the establishing of a pre-emption, under the Act of 4th September, 1841, by the soldier or warrantee, permit the location of the warrant upon the tract. If the area of the tract so located be greater than the amount of the warrant, the excess is to be paid for, and a receipt issued by the Receiver, agreeably to the instructions contained in the Circular of 1st October, 1847.

2d. An assignee of a warrant can make his location only upon land which is "*subject to private entry*." The provision of the law is, that no warrant shall be located upon land to which "there shall be a pre-emption right, or upon which there shall be an actual settlement and cultivation." The construction given by this Office to this provision is, that its intent was to prevent interference with the rights of a third person, and that it was not intended to apply to an individual holding a warrant as assignee who might have a pre-emption right, or a settlement and cultivation which would entitle him to a pre-emption, upon a tract of land "*subject to private entry*." You will, therefore, when an assignee of a warrant makes application to locate the same upon a tract of land "*subject to private entry*," to which he has a pre-emption, for which he has filed a declaratory statement, or upon which he has a settlement and cultivation, permit him to do so. If the tract contains an excess over the warrant, the Circular of 1st October, 1847, gives you instructions.

3d. When the holder of a warrant shall insist upon making a location upon a tract for which a declaration has been filed by another person, you will permit him to do so. The affidavit filed by such applicant is of more weight than the bare statement of the alleged pre-emptor, and no evil can possibly result from this course. If the declaration should prove to be that of a *bona fide* pre-emptor, notwithstanding said affidavit, the pre-emptor will, upon duly establishing his claim, obtain his entry, and the location by the warrant must yield. In such cases the papers may be retained in your office until the expiration of the year allowed the pre-emptor to prove up, and the case noted on the abstract.

4th. Any legal subdivisions may be located by a warrant either in one or different sections and townships, provided the several tracts are "in one body;" that is, *contiguous*, or *separated by a line*.

5th. The affidavit required of the locator of a warrant showing that the land is vacant, may be made either by the party himself or by any disinterested credible witness who can make it for him to the satisfaction of the

Register and Receiver; and the affidavit, when made by a party who has a pre-emption right, or a settlement and cultivation in his own right, may be modified to show the fact.

6th. The date of location entered on the abstracts should agree with that of the location made by the party.

I am, very respectfully, your obedient servant,
RICHARD M. YOUNG, Commissioner.

Register and Receiver at ———.

No. 607.

Circular in relation to the location of Military Land Warrants.

GENERAL LAND OFFICE,
August 28, 1848.

Gentlemen:—In pursuance of the provisions contained in the annexed act, (No. 155,) you will permit the location of *any* bounty land warrant issued by the United States in the name of the warrantee, *upon one legal subdivision* of any of the public lands *subject to private entry* and held at a price exceeding the usual minimum of \$1 25 per acre, “reckoning the warrant at one dollar and twenty-five cents per acre for the number of acres contained therein,” the party paying the balance, if any, in money.

The provisions of the following act apply to land warrants issued for services performed in the revolutionary war, the late war with Great Britain, and the war with Mexico; and when the location is desired to be made upon a tract of land, the price of which exceeds the usual minimum—say a quarter section containing one hundred and sixty acres, held at \$2 50 per acre—the warrant, being for one hundred and sixty acres, is to be received as of the value of \$200, and \$200 to be paid in money. An eighth of a section of eighty acres, or less, can be located in full satisfaction of a hundred and sixty acre warrant. By an eighth is understood the east or west half of a quarter-section. The north or south half of a quarter is not *one* legal subdivision, but two, each being a quarter-quarter or sixteenth, unless it shall be actually so designated upon the plat by the Surveyor-General.

The bounty land warrants granted for services performed in the late war with Great Britain are for the quantity of one hundred and sixty or three hundred and twenty acres; those for services in the war with Mexico, for forty or one hundred and sixty acres; and those granted to non-commissioned officers or privates in the revolutionary war, for one hundred acres. Should any of this last class of warrants be presented for location, the party can take but one legal subdivision in satisfaction thereof. Where an excess is to be paid for, you will please follow the instructions contained in the Circular of October 1, 1847; and where the warrant, reckoning at \$1 25 per acre, would amount to more than sufficient to pay for the land located, no claim exists against the Government for the excess.

The locations under this law are intended to apply more particularly to such lands as the Wyandot Reserves in Ohio and Michigan, and the Miami Reservations in Indiana; the former of which are limited at \$2 50 and the latter at \$2 per acre, also to alternate sections upon rivers, canals, railroads, &c., where such lands are limited at a price above the usual minimum of \$1 25 per acre, and where such lands may have become subject to “*private entry*.”

Respectfully, &c.,

RICHARD M. YOUNG, Commissioner.

Register and Receiver, Land Office at ———.

No. 608.

Military Bounty Land.—Circular to Registers and Receivers.

GENERAL LAND OFFICE,
March 31, 1851.

Gentlemen:—By the Act 28th September, 1850, (No. 183,) granting bountyland to certain officers and soldiers who have been engaged in the military service of the United States, the warrantees, or their heirs at law, are authorized to locate the land to which they are entitled, at any Land Office of the United States, in one body, and in conformity to the legal subdivisions of the public lands, upon any of the public lands in such district subject to private entry on the 3d of March, 1851. It is also provided, that no land warrant issued under the provision of this Act shall be laid upon any land of the United States to which there shall be a pre-emption right, or upon which there shall be an actual settlement and cultivation, except with the consent of such settler, to be satisfactorily proven to the proper land officer.

Further, it is made the duty of the Commissioner of this Office, under such regulations as may be prescribed by the Secretary of the Interior, to cause to be located, free of expense, any warrant which the holder may transmit to this Office for that purpose, in such State and land district as the holder or warrantee may designate, and upon good farming land, so far as the same can be ascertained from the maps, plats, and field notes of the surveyor, or from any other information in the possession of the local office.

Under this law the warrantees or their heirs at law can locate the quantity to which they are entitled, in conformity to the legal subdivisions, including forty-acre tracts, on any land which was subject to entry at private sale on the 3d of March, 1851.

They cannot take tracts concerning on each other, nor can they be permitted to select a series of small fractions on a water-course, Indian boundary, &c., as the law requires that the location shall be in one body—that is, in a compact form.

When application is made to locate these warrants by the warrantee, the applicant should make oath that he is the person specified in the warrant before the location is permitted.

When such application is made by an attorney of a warrantee, the power of attorney, duly authenticated, must be filed with the application; and when by guardian of the minors, who are warrantees, the letters of guardianship, authenticated by the proper court, must in like manner be filed.

When the warrantee has died after the issuing of the warrant, and before it is located, proof of that fact must be adduced; and if he died intestate, proof of heirship should be required, which proof must consist of the certificate of a court having probate jurisdiction, issued under the seal of said court, stating the time of the death of the warrantee, and the name of each and every of his heirs at law, designating which of said heirs are minors or *feme coverts*.

Where a will is left, a duly certified copied of it, with letters of probate, must be presented, and in either case full authority should be given by the heirs or devisees, if adults, or by their guardians, if minors, to the proposed location. The same rules will be observed by persons making application to this or your office by letter for locations. In order that the liberal views of congress in passing this law may be carried out, and every expense to the warrantees be avoided in obtaining the benefit granted by the gratitude of their country for faithful and patriotic service, and at the same time to

secure to the hardy and enterprising settlers on the public lands the fruits of their industry and privations, the Secretary of the Interior has directed :

That all settlers on public lands, subject to entry at private sale, be requested by public notice to come forward and file their declaratory statements, within thirty days after making their settlements and improvements, as required by the Pre-emption Act of the 4th September, 1841, so as to secure their pre-emption rights, and prevent interference by the location of these warrants—

And that all warrants may be located upon the land applied for when subject to private entry without an affidavit as to whether said land is improved, and after having been so located said warrants shall remain in the hands of the land officers at least forty days—

If at the end of that time there is no interference by those locations with pre-emption claims the warrants should be returned to this Office for patenting—

You will therefore endorse on each warrant the date when, and the tracts on which application is made to locate it, and make a similar note on the plat and in your tract-book in pencil—

If there is no interference within the time above mentioned you will make those notes in ink, but if there is, you will make a new location of the warrant as hereafter directed.

When warrantees apply to locate the improvements of others they must produce the written assent of the owners of such improvements, and evidence satisfactory to you that such owner is the party thus assenting.

Warrantees can locate their own improvements, and where such warrantees are entitled to pre-emption they can locate their warrants on their own pre-emption rights, after proving up their pre-emptions to the satisfaction of the land officers where the land has been proclaimed and offered at public sale, prior to the 3d March, 1851.

In such cases where the minimum price is more than \$1 25 per acre, the warrantee can pay up in cash the difference between the cost of the land and the amount covered by the warrant, estimating the warrant at \$1 25 per acre.

When the tracts applied for contain more than the quantity expressed in the warrant, the warrantee can pay for the excess at the minimum price under the instructions heretofore issued in relation to Mexican warrants in such cases.

When the tract or tracts applied for contain a less number of acres than is specified in the warrant, they must be taken in full satisfaction of the warrant.

At the end of each month you will prepare an abstract of all locations which have remained on hand as above directed, according to the accompanying form, and transmit it with the warrants and accompanying papers to this Office.

In all cases where application is made to this Office to locate these warrants they will be transmitted to you, and you will locate them on good farming land as shown by the descriptive notes, and in every thing conform to the foregoing instructions.

Herewith you will receive the form of a notice, which you will cause to be published once a week for six weeks, in two of the newspapers of most extensive circulation in your district.

Each of these papers will be allowed \$—— for this publication for the period mentioned.

When the service is completed they should send their accounts therefor to this Office, with the first and last numbers of the paper containing the

publication, and they will be paid by an order on the nearest disbursing agent of the Government.

By a clause in the 1st section of the Act making appropriations for the support of the Government for the fiscal year ending 30th June, 1852, approved 3d March, 1851, (No. 188,) it is enacted, that no warrant for bounty land issued under the Act of 28th September, 1850, or by virtue of any other Act of Congress, shall be located on any land which had not theretofore been brought into market, and then subject to private entry, so that no land can be located under the Bounty Land Law of 28th September, 1850, or any other law granting bounty land, except that which had been proclaimed and offered for sale prior to the 3d March, 1851.

Very respectfully, your obedient servant.

J. BUTTERFIELD, Commissioner.

Register and Receiver at ———.

Military Bounty Land.—Pre-emption Rights.

GENERAL LAND OFFICE,
March 31, 1851.

In order that the liberal views of Congress, in passing the Act of 28th September, 1850, (No. 183,) granting bounty land to certain officers and soldiers who have been engaged in the military service of the United States, may be carried out, and every expense to the warrantees be avoided as far as possible in obtaining the benefits granted by the gratitude of their country for faithful and patriotic services, and at the same time to secure to the hardy and enterprising settlers on the public lands the fruits of their industry and privations, the Secretary of the Interior has directed :

That public notice be given to all settlers on public lands subject to private entry to come forward and file their declaratory statements within thirty days after making their settlements and improvements as required by the Pre-emption Act of 4th September, 1841, so as to secure their pre-emption rights, and prevent interference by the location of these warrants.

And that all warrants may be located upon the land applied for if subject to private entry on the 3d March, 1851, without an affidavit as to whether said land is improved or not; and after having been so located, said warrants shall remain in the hands of the land officers at least forty days. If at the end of that time there is no interference by those locations with pre-emption claims, or otherwise, the warrants will be returned to this Office for patenting; but if there is such interference a new location will be made.

Warrantees can locate their warrants on their own pre-emption rights where the land was proclaimed and offered at public sale prior to 3d March, 1851, and where the minimum price of the land is more than one dollar and twenty-five cents per acre, can pay in cash the difference between the cost of the land and the amount covered by the warrant, estimating the warrant at \$1 25 per acre. No pre-emption rights attach to the alternate sections reserved to the United States along the routes of railroads or canals.

Where application is made to this Office by the warrantee to locate the warrant, the applicant should designate the land district, section of country, or particular tract on which he wishes the location made, and where the tract is specified it would be well to designate several others in the order in which they are desired, that in case the tract first selected shall have been taken, the warrant can be located upon the first of the others which may be vacant, without further delay. In these cases the affidavit of the applicant, taken before an officer competent to administer oaths, that he is the

identical person mentioned in the warrant, must accompany the application. The same rules must be complied with where application by letter is made to the district land officers. Where such application is made by the attorney, guardian, executor, &c., the evidence duly certified of their authority to act must also accompany the application.

By a clause in first section of the act making appropriations for the support of the Government for the fiscal year ending 30th June, 1852, approved 3d March, 1851, (No. 188,) it is enacted that no warrant for bounty land issued under the Act of 28th September, 1850, or by virtue of any other act of Congress, shall be located on any land which had not theretofore been brought into market and then subject to private entry, so that no land can be located under the Bounty Land Law of 28th September, 1850, or any other law granting bounty land, except that which had been proclaimed and offered for sale prior to the 3d of March, 1851.

J. BUTTERFIELD, Commissioner.

GENERAL LAND OFFICE,
April 4, 1851.

Numerous applications having been made to this Office for information in relation to the manner in which land warrants under the Act of 28th September, 1850, should be located, the following answers thereto have been prepared, to wit:

There are three modes by which these locations may be made:

1st. By the warrantee in person;

2d. By the warrantee through the agency of this Office;

3d. By an agent or attorney.

If the first or second mode is adopted, the application must be made in writing, specifying the tract, land district, or section of country in which the location is desired, and be accompanied by an affidavit according to the following form, No. 1.

Where the third mode is adopted, a power of attorney must be produced, executed by the warrantee in the presence of a witness, according to the following form, No. 2, which power of attorney must be acknowledged, or proved as the case may be, before some officer authorized to take the acknowledgment of deeds, according to form No. 3 or 4.

In all cases the patents will be transmitted to the land office where the location is made, unless special directions to the contrary be given.

J. BUTTERFIELD, Commissioner.

FORM NO. 1.

State of ———, county of ———.

Before me (*a justice of the peace or other officer authorized to take affidavits,*) personally appeared (*here insert the name of warrantee,*) who being duly sworn, deposes and says, that he is the identical (*here insert name of warrantee,*) to whom warrant No. ——— for ——— acres under the Act of September, 1850, was issued on the ——— day of ——— 185—, and who now applies to locate the same.

(Affiant's signature.)

Sworn to and subscribed before me this ——— day of ———, 185—. (Officer's signature.)

FORM NO. 2.

Know all men by these presents, that I, (*here insert the name of warrantee*) of the county of ——— and State of ———, do hereby constitute and appoint ——— of ——— my true and lawful attorney, for me, and

in my name, to locate land warrant No. ——— for ——— acres of land,
which issued under the Act of September, 1850.

[Power of substitution may be inserted if desired.]

Signed in presence of

(Warrantee's signature.)

FORM NO. 3.

State of ———, county of ———.

On this ——— day of ———, in the year ———, personally appeared
(*here insert name of warrantee,*) and acknowledged the within power of
attorney to be his act and deed, and I certify, that I well know the said
(*here insert the name of warrantee,*) and that he is the same person who
is described in the within power, and who executed the same.

(Officer's signature.)

FORM NO. 4.

State of ———, county of ———.

I hereby certify, that on this ——— day of ———, in the year ———,
personally came before me (*here insert the name of witness*) and (*here
insert the name of warrantee;*) and the said (*here insert the name of
witness,*) being well known to me, was duly sworn by me, and on his oath
declared and said that he well knew the said (*here insert the name of war-
rantee,*) and that he was the same person described in, and who executed
the within power of attorney, and his testimony was to me satisfactory
evidence of that fact, and the said (*here insert the name of warrantee,*)
thereupon acknowledged the said power to be his act and deed.

(Officer's signature.)

No. 609.

Forms and Regulations for the Assignment of Land Warrants and Locations.

GENERAL LAND OFFICE,
March 23, 1852.

By the first section of the act of Congress, entitled "An act making land warrants assignable, and for other purposes," approved March 22, 1852, (No. 190,) it is provided: "That all warrants for military bounty land which have been, or may hereafter be issued, under any law of the United States, and all valid locations of the same, which have been, or may hereafter be made, are hereby declared to be assignable, by deed or instrument of writing, made and executed after the taking effect of this act, according to such form, and pursuant to such regulations, as may be prescribed by the Commissioner of the General Land Office, so as to vest the assignee with all the rights of the original owners of the warrant or location."

In accordance with the provisions of this section, the following forms* are prescribed for the assignment of the warrants and locations referred to, to wit:—

NO 1.—FORM FOR THE ASSIGNMENT OF THE WARRANT.

For value received, I, A. B., to whom the within warrant, No. ———, was issued, do hereby sell and assign unto C. D., of ———, and to his heirs

* See No. 612.

and assigns forever, the said warrant, and authorize him to locate the same, and receive a patent therefor.

Witness my hand and seal, this _____ day of _____, 185—.

Attest:

E. F.

G. H.

A. B. [SEAL.]

Form of acknowledgment where the vendor is known to the officer taking the acknowledgment.

State of _____, County of _____.

On this _____ day of _____, in the year _____, before me, personally came, (*here insert the name of the warrantee,*) to me well known, and acknowledged the foregoing assignment to be his act and deed; and I certify, that the said, (*here insert the name of warrantee,*) is the identical person to whom the within warrant issued, and who executed the foregoing assignment thereof.

(Officer's signature.)

Form of acknowledgment where the vendor is not known to the officer, and his identity has to be proved.

State of _____, County of _____.

On this _____ day of _____, in the year _____, before me, personally came, (*here insert the name of the warrantee,*) and (*here insert the name and residence of a witness,*) and the said, (*here insert the name of the witness,*) being well known to me as a credible and disinterested person, was duly sworn by me, and on his oath declared and said, that he well knows the said, (*here insert the name of the warrantee,*) and that he is the same person to whom the within warrant issued, and who executed the foregoing assignment, and his testimony being satisfactory evidence to me of that fact, the said, (*here insert the name of the warrantee,*) thereupon acknowledged the said assignment to be his act and deed.

(Officer's signature.)

NO. 2.—FORM FOR THE ASSIGNMENT OF THE LOCATION.

For value received, I, A. B., to whom the within certificate of location was issued, do hereby sell and assign unto C. D., and to his heirs and assigns forever, the said certificate of location, and the warrant and land therein described, and authorize him to receive the patent therefor.

Witness my hand and seal, this _____ day of _____, 185—.

Attest:

E. F.

G. H.

A. B. [SEAL.]

Form of acknowledgment where the vendor is personally known to the officer taking the same.

State of _____, County of _____.

On this _____ day of _____, in the year _____, before me, personally came, (*here insert the name of the person to whom the certificate of location issued,*) to me well known, and acknowledged the foregoing assignment to be his act and deed; and I certify, that the said, (*here insert the name of the person to whom the certificate of location issued,*) is the identical person to whom the within certificate of location issued, and who executed the foregoing assignment thereof.

(Officer's signature.)

Form of acknowledgment where the vendor is not personally known to the officer, and where his identity has to be proved.

State of ———, County of ———.

On this ——— day of ———, in the year ———, before me, personally came, (*here insert the name of the person to whom the certificate of location issued,*) and, (*here insert the name and residence of a witness,*) and the said, (*here insert the name of the witness,*) being well known to me as a credible and disinterested person, was duly sworn by me, and on his oath declared and said that he well knows the said, (*here insert the name of the person to whom the certificate of location issued,*) and that he is the same person to whom the within certificate of location issued, and who executed the foregoing assignment; and his testimony being satisfactory evidence to me of that fact, the said, (*here insert the name of the person to whom the certificate of location issued,*) thereupon acknowledged the said assignment to be his act and deed.

(Officer's signature.)

Assignment No. 1, and acknowledgment, must be endorsed upon the warrant, and No. 2, and acknowledgment, upon the certificate of location; and must be attested by two witnesses, acknowledged before a Register or Receiver of a Land Office, a Judge of a Court of Record, a Justice of the Peace, or a Commissioner of Deeds, resident in the State from which he derives his appointment; and in every instance where the acknowledgment is made before either of the officers above specified, except the Register or Receiver of a land office, it must be accompanied by a certificate, under seal of the proper authority, of the official character of the person before whom the acknowledgment was made, and also of the genuineness of his signature.

All assignments of bounty land warrants, issued under the Act of September 28, 1850, made before the date of this act, are invalid and void.

The same section provides, "that any person entitled to pre-emption right to any land, shall be entitled to use any such land warrant in payment of the same, at the rate of \$1 25 per acre for the quantity of land therein specified."

By this provision, all persons entitled to pre-emption, whether on offered or unoffered lands, can use a military bounty land warrant in payment for the tract pre-empted, reckoning the said warrant at \$1 25 per acre for the quantity therein specified, whether the land so claimed is at the usual or enhanced minimum.

Should the area of the tract claimed exceed the amount called for in the warrant, the pre-emptor will have to pay for the excess in cash; but if it should fall short, he is not entitled to a refunding of the excess.

It is further provided by the same section, "that the warrants which have been, or may hereafter be issued, in pursuance of said laws or of this act, may be located, according to the legal subdivisions of the public lands, in one body, upon any lands of the United States subject to private entry at the time of such location, at the minimum price: *Provided further,* That when said warrants shall be located on lands which are subject to entry at a greater minimum than \$1 25 per acre, the locator of said warrant shall pay to the United States, in cash, the difference between the value of such warrants at \$1 25 per acre, and the tract of land located on."

By these provisions, where the lands are subject to private entry at \$1 25 per acre, the holder of an eighty-acre warrant can take any two forty-acre lots, forming a compact body of eighty acres; and the holder of

a warrant for one hundred and sixty acres can take two eighty-acre, or four forty-acre tracts, forming a compact body of one hundred and sixty acres.

Where the minimum price of the lands subject to private entry proposed to be located, is more than \$1 25 per acre, the holder of the warrant can locate, in accordance with the instructions contained in the foregoing paragraph, the quantity specified in the warrant, by paying the difference in cash.

This act does not authorize the holder of an eighty-acre warrant to locate therewith a forty-acre tract of land, at \$2 50 per acre, in full satisfaction thereof, but he must locate, by legal subdivisions, the compact body of eighty acres, as near as may be, and pay the difference in cash. So also of one hundred and sixty-acre warrants.

Each warrant is to be distinctly and separately located, so that it follows that no *body of land* can be located by an assignee of various warrantees, with a *number of warrants*; nor can a pre-emptor in any case use more than one warrant in the location of the land pre-empted by him, and the excess, if any, must be paid for by him in cash.

The second section of this act provides, "that the Registers and Receivers of the land offices shall hereafter be severally authorized to charge and receive for their services in locating all military bounty land warrants, issued since the 11th day of February, 1847, the same compensation or per centage to which they are entitled by law, for sales of the public lands for cash, at the rate of \$1 25 per acre, the said compensation to be hereafter paid by the assignees or holders of such warrants."

The third section of this act provides, "that Registers and Receivers, whether in or out of office at the passage of this act, or their legal representatives, in case of death, shall be entitled to receive from the Treasury of the United States, for services heretofore performed in locating military bounty land warrants, the same rate of compensation provided in the preceding section for services hereafter to be performed, after deducting the amount already received by such officers, under the act entitled, 'An act to require the holders of military land warrants to compensate the land officers of the United States for services in relation to the location of those warrants,' approved May 17, 1848: *Provided*, That no Register or Receiver shall receive any compensation out of the Treasury for past services, who has charged and received illegal fees for the location of such warrants: *And provided further*, That no Register or Receiver shall receive for his services, during any year, a greater compensation than the maximum now allowed by law."

Where parties may desire to avail themselves of the privilege of having their warrants located through this Office, as provided for by the Act of 28th September, 1850, they must take the necessary steps to pay to the Register and Receiver the fees to which they are entitled. The same course must be observed by persons remote from the district land offices, in making applications by letter to those officers. Without the payment of those fees, the warrants cannot be located.

By the terms of this law, the fees are as follows:—

For a 40 acre warrant,	fifty cents each to Register and Receiver—total	\$1 00
For an 80 " " " "	one dollar " " " "	2 00
For a 160 " " " "	two dollars " " " "	4 00

J. BUTTERFIELD, Commissioner.

P. S.—Numerous applications having been made for authority to sell warrants and locations under powers of attorney, the following forms are prescribed for that purpose, which, however, must invariably be endorsed on the warrant, or they will not be recognized.

No. 3.—FORM OF A POWER OF ATTORNEY.

Know all men by these presents, that I, (*here insert the name of warrantee,*) of the county of _____, and State of _____, do hereby constitute and appoint _____, of _____, my true and lawful attorney, for me, and in my name, to sell and convey the within land warrant, No. _____, for _____ acres of land, which issued under the Act of September, 1850.

Signed in presence of

(Warrantee's signature.)

The acknowledgment of this power of attorney must be taken and certified in the same manner as the acknowledgments of the sales of the warrant or certificate of location hereinbefore prescribed, and must also be endorsed on the warrant.

J. BUTTERFIELD, Commissioner.

No. 610.*Circular.*

GENERAL LAND OFFICE,
April 2, 1852.

Gentlemen :—Enclosed you will receive the “forms and regulations for the assignment of land warrants and locations,” and for the location of those warrants under the Act of 22d March, 1852, (No. 190.)

These forms and regulations will be strictly complied with in all cases, and all the evidence in each case must be complete in itself.

Where assignments are made under powers of attorney, the power of attorney must be endorsed on the warrant or certificate of location, the identity of the principal must be established as in cases of assignments, and the acknowledgment executed and certified in the same manner.

The regulations in the enclosed circular, relative to the locations of these warrants, will govern you in all cases under this law, but are not intended, and must not be regarded, as affecting in any manner the rights and privileges granted by the Act of 14th August, 1848, (No. 155,) and the instructions under it, so far as the class of cases therein referred to are concerned, which remain intact.

Each warrant must be located on a compact body of land; hence, tracts that lie diagonally to each other, that is, touch only at the corners, cannot be located; and where a residuary tract less than the amount called for in the warrant is applied for, it must be taken in full satisfaction of the warrant.

This act authorizes you to charge and receive for your services, in locating all military bounty land warrants, the same compensation, or per centage, to which you are entitled by law for sales of public lands for cash, at the rate of \$1 25 per acre, the said compensation to be hereafter paid by the assignees or holders of such warrants.

This authorizes each of you to charge one per cent. on the amount that the land would have brought if paid for in cash. Hence, where a tract containing eighty acres is located by an eighty acre warrant, you will each charge one dollar; if it contains seventy acres, you will each charge eighty-seven and a half cents; but if it contains one hundred acres, you should require the twenty acres additional to be paid for, and each charge the holder of the warrant one dollar, as you will obtain the balance of your per centage on the cash payment.

In your quarterly accounts, the Receiver will charge himself with the

amount of fees received by both, and credit himself with the per centage to which both are entitled, for fees and sales, not exceeding twenty-five hundred dollars to each per annum, the amount of per centage allowed by law; any amount beyond that sum, either for fees or per centage, will go into the Treasury.

The accounts of the several land officers, for the amounts to which they are respectively entitled for services rendered prior to the passage of this act, will be adjusted, and the amounts remitted to them in drafts from the Treasury as soon as practicable.

In all cases located since the passage of the act, and before the receipt of these instructions, the patents will not be delivered till the fees are paid, and you will please so notify the parties interested, and in no case will the patent be delivered without the surrender of the certificate of location.

Respectfully, your ob't serv't,

J. BUTTERFIELD, Commissioner.

Register and Receiver at —.

No. 611.

Circular to Registers and Receivers, under the Act of Congress approved 3d March, 1853, entitled "An Act to authorize the correction of erroneous locations of Military Bounty Land Warrants by actual settlers on public lands in certain cases."

GENERAL LAND OFFICE,
April 20, 1853.

Gentlemen :—By the first section of the act above referred to, (No. 225,) you will perceive that relief is extended only to such as were actually settled upon the land *prior* to their attempt to locate it at the Land Office, and, to entitle any one to a change of entry to the land actually settled upon and improved by him, (if it be vacant, and, if not, to any other vacant land,) he must prove that to be the fact. His own affidavit to that effect alone will not be sufficient, but must be supported by the best corroborative disinterested testimony he can procure. This evidence and affidavit may be taken before either of you, before a justice of the peace, or an officer using a seal authorized to administer oaths. If before a justice of the peace, a certificate of magistracy, under seal, from the clerk of the proper court, must accompany the proof. If the tract actually entered has not been patented, the party must surrender the certificate of location, and make oath before either of the officers indicated above that he has not sold or encumbered the title to the land in any way whatever; if it has been, he must surrender the patent, with his relinquishment to the United States endorsed thereon, and in addition to his own affidavit procure a certificate, under seal, from the recorder of deeds for the county in which the land is situated, that there is no conveyance or encumbrance of any kind of the land on record in his office. This evidence, with your own opinion as to the existence of the mistake, and the credibility of each witness, you will forward to this Office for its decision.

2d. By the 2d section, the provisions of the Acts of 3d March, 1819, (No. 11,) and the 24th May, 1828, (No. 19,) are extended for the relief of any locator of a warrant, and in acting under it you will be governed by the instructions from this Office of the 31st August, 1830, (Laws and Instructions, part 2d, pp. 430 to 434 inclusive.)

3d. In neither class of cases will the party be entitled to the return of any purchase-money which he may have paid upon the original location,

and if the area of the tract to which the change of location is desired be greater than that of the original, and exceeds the quantity called for by the warrant, the excess in price must be paid.

4th. These changes of location you will bring in as "addenda" to your monthly abstracts, with reference to the letter from this Office authorizing them.

5th. The general tenor of the laws in relation to the sale and disposition of the public lands evidently contemplates a division of labor between the Register and Receiver, and that in the discharge of their respective duties each should be a check upon the other; and as the fees of Registers and Receivers for their services in locating warrants are equal, it is but fair that there should be a corresponding division of the labor; it is therefore hereby made the duty of the Register to receive the warrants and application of the party, issue the certificate of location, enter the location upon the tract and plat books, and then, each day, after the close of the office for sales and locations, to hand the warrants to the Receiver, who shall then proceed to make up the abstracts for daily examination as hereinafter required, and rendition at the expiration of each month.

6th. The Register is hereby required to post the books of his office *each day*, and the examination of certificates, receipts and applications with each other, and with the plat and tract books as also of the certificates of the location of warrants with the application of the purchaser and the plat and tract books, is required to be made *daily*, and the Receiver is required on the respective monthly abstracts of certificates issued and warrants located, to certify that these duties have been complied with.

Very respectfully,

JOHN WILSON, Commissioner.

Register and Receiver at —.

No. 612.

Circular.

GENERAL LAND OFFICE,
October 14, 1852.

Gentlemen:—Numerous applications having been made to this Office on the subject, it has been decided, on full consideration, to recognize assignments of land warrants, when executed before two witnesses and acknowledged before a notary public; in all cases, however, to be accompanied by a certificate, under seal, from the proper authority, of the official character of the notary at the time of taking such acknowledgments, and of the genuineness of his signature.

The instructions of the 23d March last will therefore be regarded as so amended.

Very respectfully,

JOHN WILSON, Commissioner.

Register and Receiver, Land Office at —.

No. 613.

*Circular to Registers and Receivers of the United States Land Offices.**

GENERAL LAND OFFICE,
October 17, 1853.

Gentlemen :—The numerous inquiries made at this Office in reference to the assignment of land warrants under the Acts of 28th September, 1850, (No. 183,) and March 22, 1852, (No. 190,) together with the great mass of business thrown upon this Office by inattention at the local land offices to the proper requirements of the laws and instructions prior to the allowance of locations, render it necessary to issue this circular, not only with a view to public information, through you, but as a guide to you in your action in reference to the principles governing cases hereinafter referred to, and as to the papers necessary to establish the rights of those claiming to locate or dispose of said warrants.

Warrants have been returned to this Office, located : 1st, upon assignments not written on the back of said warrants, or by virtue of powers of attorney not so written, as required by instructions ; 2d, where, by reason of prior assignments, no further room exists on the warrants, subsequent assignments appear on *separate* pieces of paper, instead of being attached thereto in such a way as to show their execution to have been effected with the warrants, before the proper officers certifying to the acknowledgments thereof : 3d, upon assignments by *minor warrantees*, without proof of the *time* when they attained their majority ; 4th, upon assignments by *guardians* of minor warrantees, or of *minor heirs of deceased warrantees or assignees*, without proof of guardianship, or of authority from the proper court for the sale of the *real estate* of their wards, and in case of the heirs of such deceased warrantees or assignees, without proof of such death, the time when, and that the persons named are the heirs, and *only* heirs-at-law, of the decedent ; 5th, upon assignments executed by administrators or widows of deceased warrantees, neither of whom have any right to assign the same, except in such States where the administrator of an intestate is invested, by statutory provision, with power to alienate the *real estate* of his intestate ; 6th, upon assignments unattested by *two* witnesses, or, without the proper certificate that the assignor was well known to the justice of the peace, or notary public, or other officer taking the acknowledgment, or without the proper evidence that the justice of the peace, or notary, or such other officer was such *at the time*, and that his signature is *genuine* ; 7th, upon assignments executed by *females*, who were either *femes sole*, or *femes covert*, and without evidence, in the first case, that they were twenty-one years of age, and in the latter, without a union in such assignments by their husbands ; 8th, where two assignments exist—one made to one person, but before a perfection of the acknowledgment thereof, a second assignment is executed to another, without any satisfactory explanation as to the first ; 9th, upon assignments where the blank is not filled with the name of the assignee who locates ; 10th, upon assignments where the name of the assignee is inserted in the place occupied by the erased name of a prior assignee, or by an interlineation thereof above such erasure ; 11th, upon assignments executed by a commissioner, or other designated person, alleged to be acting under a decree of a court, without the requisite evidence of his authority as such, and that the decree embraced the property assigned ; 12th, upon assignments by executors, without a duly certified copy of the will, showing that power to sell was conferred on such executor ; 13th, where certificates of location are unsigned by the parties locating ; 14th,

* Portions of this modified by Circular, November 1, 1858, which see.

without oaths of identity where warrantees or guardians of minors locate for their wards; 15th, locations by attorneys of assignees, without the powers of attorney accompanying the location; and 16th, the location made by a person whose name entirely differs from that in the assignment, sometimes in the christian name, at others, in the orthography of the surname, and at others, in the presence or absence of an initial letter in a middle name, or otherwise.

Such are some of the most material irregularities with which this Office has had to contend, and which is now embarrassing its legitimate operations by correspondence requisite to perfect or undo that which has been erroneously performed.

You are strictly enjoined to avoid permitting any location to be made by any applicant where any of the foregoing objections, or others of a like character exist, requiring every applicant to have his warrant perfected in every respect, so that no subsequent action may be necessary for that purpose.

In all the instances herein enumerated, except the eighth and tenth, the mere statement of the defect carries with it the requisite knowledge of the method of amendment, viz: by supplying the omission. In the two instances thus excepted, special instructions are deemed necessary.

In reference to the first of said exceptions, No. 8, the assignor should, in the subsequent assignment, refer to the first one executed, and specify the reason for the execution of the second, or it should be made to appear in the certificate of acknowledgment of the officer before whom the latter was taken. In reference to the latter of said exceptions, No. 10, there should be an acknowledgment from the person whose name had been erased, that it had been erroneously inserted therein, and had been erased with his knowledge and consent, and that he claimed no right or interest in the warrant; when such person cannot be found, and the erasure was made in the presence of one or both of the land officers, at the time of locating the warrant, their certificate to that fact, stating further, that they were fully satisfied of the identity of the individual whose name was erased, and that the erasure thereof, and the substitution of that of another, were made with such person's consent, or at his request, will be deemed by this Office satisfactory. Failing, however, to obtain the evidence in either one or the other modes above prescribed, assignments of warrants possessing the defects under consideration will not be respected by this Office, unless the validity thereof is satisfactorily affirmed by some court of competent jurisdiction, or upon the action of the warrantee himself.

As many inquiries are made relative to the rights of parties where military warrants under Acts of 1850 and 1852 have issued to persons who have died *before* or *after* the *date of the warrant*, the following general principles governing in such cases are given:

1st. Where a soldier has died *before* the *date* of the warrant, it is a nullity, and should be surrendered to the Pension Office with a view to the issue of a new one to the *widow*, if one exists, and if not, to the *minor children* of the soldier, *in whom alone exists the right to such warrant*, in the respective instances cited.

2d. Where the soldier dies *after* the *date* of the warrant, and before its location or sale, the property therein descends to his *heirs-at-law*, *who alone have the right to locate or dispose of the same*, unless express provision is made in the will of said decedent, in which case it follows, of course, the special devise so made. Proof must be submitted of the demise of the warrantee, and the date when, and a certified copy of the will, making the devise in question either in specific terms, or by a devise of his *real estate*

generally, which would of course include such warrant. Where no will has been made, in addition to proof of the demise and the period thereof, it should be shown, *who* are the heirs, and *only* heirs, and if any of them are *minors*, they must act through their *guardians*, whose appointment is to be proven; and if such action is for the sale of the warrant, express authority to that effect must be shown to have been given by the proper probate court. Where the warrant is issued to minor children, or where persons shown to be heirs-at-law of a deceased warrantee or assignee, unite *personally* in an assignment, it must be shown that at the date thereof they had each attained the age of twenty-one years; and where the said heirs, or any portion of them, are *femes covert*, their husbands must unite in the assignment.

The proof herein referred to must be attached to the warrant, and should be such as has been taken before the probate court, or other legal tribunal having jurisdiction over the estates of deceased persons, and consist not of the mere certificate of the ministerial officer of such court of the facts referred to, *but of transcripts from the records of such court*, duly certified and under seal, which transcripts of themselves evidence such facts.

3d. Where the warrant has been assigned, and the last assignee dies without having located or disposed thereof, the same rules apply in reference to its devise or descent to his heirs-at-law.

4th. These warrants being regarded as *real estate*,* they are to be treated as such by the respective courts having jurisdiction thereof, and hence such action as would be applicable to mere *chattel property*, under the law of the particular State in which the decedent had his domicile, will not be sufficient.

5th. Where the heirs are so scattered as to render it difficult or impracticable to obtain their individual assignments,† then, on a decree of the proper court, in a proceeding similar to a petition for partition, the assignment may be made by the commissioner appointed to make sale, he to account to the heirs for the proceeds, or the right to locate the said warrant would vest immediately in the person in whose favor a decree might be made, on an approval of a sale effected under a preparatory decree; a certified transcript of the proceedings of the court, in either case, should be appended to the warrant.

6th. Where the assignment of a warrant is executed by the warrantee or an assignee, or by any of the heirs of either, in a foreign country, the attestation of the American consul in such foreign country should be obtained as to the official character and genuineness of the signature of the persons before whom the acknowledgment of the assignment was taken; or, if the official character, &c., of such foreign functionary is attested by a consular agent of such foreign government residing in this country, his official character must be certified to by the official representative of such foreign government in the United States, inasmuch as the State Department here has no official knowledge of the handwriting or seals of *consuls* of foreign powers. Where such assignments are executed in a foreign language, duly authenticated translations thereof must be also furnished.

7th. Widows, as such, of deceased warrantees, have *no* right to locate or assign said warrants; neither have administrators, except where the statute law of a State gives them express authority to dispose of the *reality* of their intestates, and then it should be evidenced by a proper certificate to that effect on the face of the warrant.

* By Act June 3, 1858, (No. 335,) warrants are declared personal property.

† See Circular, November 1, 1858, (No. 617.)

8th. A warrant issued to minor heirs, or assigned by a warrantee to three or more persons, cannot be located if assigned by one portion of the parties to another portion, or to other persons, so as to invest any *one* of the parties with a greater interest than any other. In other words, *each* owner of a warrant, at the time of its location, must have an *equal* share or interest therein.

9th. Warrants issued to a "guardian of" minor heirs should be located in the name or names of the minors themselves, instead of in those of the guardians. The issue of the warrant in that form was an inadvertence, and the words "guardian of" will be erased by the Pension Office, after its location and return to this Office.

10th. Where an assignment has been apparently agreed upon, as evinced by a partial execution thereof, and the assignor dies before it is fully completed, by the attesting signatures of two witnesses, and acknowledgment before a proper officer, the assignment must be made *de novo* by the heirs-at-law, accompanied by satisfactory explanatory evidence as to the incomplete assignment.

11th. Parties in interest are not to be recognized as legal attesting witnesses to an assignment, and the legibility of the names of parties should in all cases be required.

As to Locations.

There are three modes by which these locations may be made :

1st. By the warrantee, or other legal owner of the warrant, in person.

2d. By the warrantee, or other legal owner of the warrant, through the agency of this Office.

3d. By an agent or attorney, of either of said parties.

If the first or second mode is adopted, the application must be made in writing, specifying the tract, land district, or section of country in which the location is desired, and be accompanied by an affidavit according to form No. 1, hereto appended.

Where the third mode is adopted, a power of attorney must be produced, executed by the owner of the warrant in the presence of a witness, according to form No. 2; which power of attorney must be acknowledged, or proved, as the case may be, before some officer authorized to take the acknowledgment of deeds, according to form No. 3 or No. 4.

The following fees are chargeable by the land officers, and the several amounts must be *paid at the time of location* :

For a 40 acre warrant,	fifty cents each to the Register and Receiver—total	\$1 00
For an 80 " " "	one dollar " " " " "	2 00
For a 160 " " "	two dollars " " " " "	4 00

In all cases the patents will be transmitted to the land office where the location is made, unless special directions to the contrary be given, in which last case the duplicate certificate of location must be previously transmitted to this Office.

As to Assignments and Powers of Attorney.

Assignment No. 5, and the proper acknowledgment, must be endorsed upon the warrant, and No. 6, and the proper acknowledgment, upon the certificate of location, and must be attested by two witnesses, acknowledged before a Register or Receiver of a Land Office, a Judge of a Court of Record, a Clerk thereof, when authorized to take acknowledgments, a Justice of the Peace, Notary Public, or a Commissioner of Deeds, resident in the State from which he derives his appointment; and in every instance where the acknowledgment is made before either of the officers above specified, except the Register or Receiver of a Land Office, or the Clerk of a Court

of Record, it must be accompanied by a certificate, under seal of the proper authority, of the official character of the person before whom the acknowledgment was made, and also of the genuineness of his signature.

Where warrants are disposed of under powers of attorney, form No. 7 is prescribed for that purpose; which, however, must *invariably* be *endorsed on the warrant*, or they will not be recognized.

The acknowledgment of this power of attorney must be taken and certified in the same manner as the acknowledgments of the sales of the warrant or certificate of location hereinbefore prescribed, and must also be *endorsed on the warrant*.

Respectfully, your obedient servant,

JOHN WILSON, Commissioner.

To Register and Receiver of the Land Office at —.

FORM NO. 1.

State of —, County of —.

Before me, (*a justice of the peace or other officer authorized to take affidavits,*) personally appeared, (*here insert the name of the warrantee,*) who being duly sworn, deposes and says, that he is the identical, (*here insert name of warrantee,*) to whom warrant No. —, for — acres under the Act of September, 1850, (*or March, 1852, as the case may be,*) was issued on the — day of —, 185—, and who now applies to locate the same.

(Affiant's signature.)

Sworn to and subscribed before me this — day of —, 185—.

(Officer's signature.)

FORM NO. 2.

Know all men by these presents, that I, (*here insert the name of warrantee,*) of the county of —, and State of —, do hereby constitute and appoint — of —, my true and lawful attorney, for me, and in my name, to locate land warrant No. —, for — acres of land, which issued under the Act of September, 1850, (*or March, 1852, as the case may be.*)

(Power of substitution may be inserted, if desired.)

Signed in presence of

(Warrantee's signature.)

FORM NO. 3.

State of —, County of —.

On this — day of —, in the year —, personally appeared, (*here insert name of warrantee,*) and acknowledged the within power of attorney to be his act and deed; and I certify, that I well know the said, (*here insert the name of warrantee,*) and that he is the same person who is described in the within power, and who executed the same.

(Officer's signature.)

FORM NO. 4.

State of —, County of —.

I hereby certify, that on this — day of —, in the year —, personally came before me, (*here insert the name of the witness,*) and, (*here insert name of warrantee,*) and the said, (*here insert the name of witness,*) being well known to me, was duly sworn by me, and on his oath declared and said that he well knew the said, (*here insert the name of warrantee,*) and that he was the same person described in, and who executed

the within power of attorney, and his testimony was to me satisfactory evidence of that fact, and the said, (*here insert the name of warrantee,*) thereupon acknowledged the said power to be his act and deed.

(Officer's signature.)

FORM NO. 5.

For the assignment of the warrant.

For value received, I, A. B., to whom the within warrant No. ——— was issued, (*or assigned, as the case may be,*) do hereby sell and assign unto C. D., of ——— and to his heirs and assigns forever, the said warrant, and authorize him to locate the same, and receive a patent therefor.

Witness my hand and seal, this ——— day of ——— 185—.

Attest :

A. B. [SEAL.]

E. F.

G. H.

Of acknowledgment where the vendor is known to the officer taking the same.

State of ———, County of ———.

On this ——— day of ———, in the year ———, before me, personally came, (*here insert the name of the warrantee or assignor,*) to me well known, and acknowledged the foregoing assignment to be his act and deed ; and I certify that the said (*here insert the name of the warrantee or assignor,*) is the identical person to whom the within warrant issued, (*or was assigned, as the case may be,*) and who executed the foregoing assignment thereof.

(Officer's signature.)

Of acknowledgment where the vendor is not known to the officer, and his identity has to be proved.

State of ———, County of ———.

On this ——— day of ———, in the year ———, before me personally came, (*here insert the name of the warrantee or assignor,*) and (*here insert the name and residence of a witness,*) and the said (*here insert the name of the witness,*) being well known to me as a credible and disinterested person, was duly sworn by me, and on his oath declared and said, that he well knows the said (*here insert the name of the warrantee or assignor,*) and that he is the same person to whom the within warrant issued, (*or was assigned,*) and who executed the foregoing assignment, and his testimony being satisfactory evidence to me of that fact, the said (*here insert the name of the warrantee or assignor,*) thereupon acknowledged the said assignment to be his act and deed.

(Officer's signature.)

FORM NO. 6.

For the assignment of the location.

For value received, I, A. B., to whom the within certificate of location was issued, do hereby sell and assign unto C. D., and to his heirs and assigns forever, the said certificate of location, and the warrant and land therein described, and authorize him to receive the patent therefor.

Witness my hand and seal, this ——— day of ———, 185—.

Attest :

A. B. [SEAL.]

E. F.

G. H.

Of acknowledgment where the vendor is personally known to the officer taking the same.

State of ——— County of ———.

On this ——— day of ——— in the year ———, before me, personally came (*here insert the name of the person to whom the certificate of location issued*) to me well known, and acknowledged the foregoing assignment to

be his act and deed; and I certify that the said (*here insert the name of the person to whom the certificate of location issued*) is the identical person to whom the within certificate of location issued, and who executed the foregoing assignment thereof.

(Officer's signature.)

Of acknowledgment where the vendor is not personally known to the officer, and where his identity has to be proved.

State of ———, County of ———.

On this ——— day of ———, in the year ———, before me, personally came (*here insert the name of the person to whom the certificate of location issued,*) and (*here insert the name and residence of a witness,*) and the said (*here insert the name of the witness,*) being well known to me as a credible and disinterested person, was duly sworn by me, and on his oath declared and said that he well knows the said, (*here insert the name of the person to whom the certificate of location issued,*) and that he is the same person to whom the within certificate of location issued, and who executed the foregoing assignment; and his testimony being satisfactory evidence to me of that fact, the said (*here insert the name of the person to whom the certificate of location issued*) thereupon acknowledged the said assignment to be his act and deed.

FORM NO. 7.

Of a power of attorney to sell a warrant.

Know all men by these presents, that I, (*here insert the name of warrantee,*) of the county of ——— and State of ———, do hereby constitute and appoint ——— of ———, my true and lawful attorney, for me, and in my name, to sell and convey the within land warrant No. ——— for ——— acres of land, which issued under the Act of September, 1850, (*or March, 1852, as the case may be.*)

Signed in presence of

(Warrantee's signature.)

No. 614.

Circular.

GENERAL LAND OFFICE,
February 14, 1854.

Gentlemen:—Annexed is a copy of the act of Congress approved February 8, 1854, (No. 230,) extending the Act of July 27, 1842, (No. 55,) authorizing the location of the war of 1812 warrants, for five years, computed from the 26th day of June, 1853.

You will, therefore, permit the location of any warrant of this class filed after the date of this letter, to be governed strictly by the regulations of this Office under the Act of March 22, 1852.

Respectfully, your obedient servant,

JOHN WILSON, Commissioner.

Register and Receiver, Land Office at ———.

No. 615.

Circular to Registers and Receivers of the United States Land Offices.

GENERAL LAND OFFICE,
May 3, 1855.

Gentlemen:—By the 4th section of the act of Congress, entitled "An act in addition to certain acts granting bounty land to certain officers and

soldiers who have been engaged in the military service of the United States," approved 3d March, 1855, (No. 282,) a copy of which act is hereto appended, it is directed, "that said certificates or warrants may be assigned, transferred, and located by the warrantees, their assignees, or their heirs-at-law, according to the provisions of existing laws regulating the assignment, transfer, and location of bounty-land warrants."

Under the proper head, in this circular, full instructions and forms will be found for the assignment or transfer and location of such warrants.

Sec. No. 1.—In regard to the *location*, the fifth section of the act directs "that no warrant issued under the provisions of this act shall be located on any public lands, except such as shall at the time be subject to sale at either the minimum or lower graduated prices."

By this provision, all lands, the minimum price of which is *more* than \$1 25 per acre, are excluded from location by warrants under this act of 3d March, 1855; but lands "*subject to sale*" at the ordinary minimum or at the graduated prices can be so located.* Hence, pre-emptors settled upon lands subject to sale at the ordinary minimum can locate the land to which they have pre-emption rights, with warrants under said Act of 3d March, 1855, whether such lands have or have not been offered at public sale; but this privilege, as to *unoffered lands*, extends to no other holders of these warrants, except those who are also pre-emptors.

Sec. No. 2.—Should the area of a tract claimed exceed the number of acres called for in the warrant, the locator of the warrant will have to pay for the excess in cash; but if it should fall short, he must take the tract in full satisfaction of his warrant.

Sec. No. 3.—Each warrant is to be distinctly and separately located upon a *compact* body of land; consequently the assignee of various warrantees cannot locate a *body of land*, with a number of warrants, without specifying the particular tract or tracts to which each shall be applied; and for each warrant there must be a distinct location, certificate, and patent. Nor can a pre-emptor, in any case, use more than *one* warrant in the location of the land, *pre-empted* by him, and the excess, if any, must be paid for by him in cash.

Sec. No. 4.—The 6th section of this act directs, "that the Registers and Receivers of the several land offices shall be severally authorized to charge and receive, for their services in locating all warrants under the provisions of this act, the same compensation or per-centage to which they are entitled by law for sales of the public lands for cash, at the rate of one dollar and twenty-five cents per acre; the said compensation to be paid by the assignees or holders of such warrants."

The amount of fees to which the land officers are entitled under this section is specified in the appended instructions, and without the payment of those fees, the warrants cannot be located.

Sec. No. 5.—The 7th section of the act provides, "that the provisions of this act, and all the bounty-land laws heretofore passed by Congress, shall be extended to Indians in the same manner, and to the same extent, as if the said Indians had been white men."

Where an assignment is made by an *Indian* residing among the whites, the prescribed forms will be adopted, with this single *addition*, that the officer taking the acknowledgment shall certify that the Indian is capable of contracting, also to the amount paid to him for the warrant, and that he saw the same paid to the Indian.

Where it is made by an Indian holding his tribal relations, his identity

* The Act of June 3, 1858, (No. 335,) authorizes location upon \$2 50 lands. See also Circular, (No. 617.)

and ability to contract must be certified by the superintendent, or Indian agent, either of his own knowledge, or on the testimony of the chiefs, specifying which, and certifying, as above required, to the amount paid for said warrant, that the same was paid in his presence, and that the transaction was fair and regular. In either case, if the amount paid is not a fair consideration, the assignment will be disregarded.

Where a warrant for the services of an Indian is issued or descends to minors who no longer retain their tribal relations, it must be located or sold by a guardian, duly appointed and authorized by the proper court for that purpose.

Where the minor or minors retain their tribal relations, the agent or superintendent must certify that they are entitled to the warrant under the laws, usages, and customs of the tribe; and when sold or located, that it was done by the guardian or such proper representative as, according to said laws, usages and customs, was fully authorized to do so.

In all cases where the signature of the superintendent or Indian agent is herein required, the genuineness of the signature of that officer must be attested by the Commissioner of Indian Affairs.

Sec. No. 6.—In ordinary cases, the forms and instructions for assignments of warrants issued under the Acts of 1850 and 1852 will govern; and as those instructions are very full, and have been extensively circulated for nearly three years, assignments under this act will not be certified or examined until the warrants are returned to this Office located, and are taken up for patenting. The necessity for such examination is obviated further by the fact, that, from the experience had by this Office under the Acts of 1847, 1850, and 1852, the following embrace every case, it is believed, that can arise, of difficulty, in assigning or locating warrants, to wit:

Sec. No. 7.—Under those acts, warrants have been returned to this Office, located—

1st. Upon assignments not written on the back of said warrants, or by virtue of powers of attorney not so written, as required by instructions.

2d. Where, by reason of prior assignments, no further room exists on the warrants, subsequent assignments appear on *separate* pieces of paper, instead of being attached thereto in such a way as to show their execution to have been effected with the warrants before the proper officers certifying to the acknowledgments thereof.

3d. Upon assignments by *minor warrantees*, without proof of the *time* when they attained their majority.

4th. Upon assignments by *guardians* of minor warrantees, or of *minor heirs of deceased warrantees or assignees*, without proof of guardianship, or of authority from the proper court for the sale of the *real estate* of their wards, and in case of the heirs of such deceased warrantees or assignees, without proof of such death, the time when, and that the persons named are the heirs, and *only* heirs-at-law, of the decedent.

5th. Upon assignments executed by administrators or widows of deceased warrantees, neither of whom has any right to assign the same, except in the States where the administrator of an intestate is invested, by statutory provision, with power to alienate the *real estate* of his intestate, and then only for division and not for the payment of debts contracted prior to the issue of the patent.

6th. Upon assignments unattested by *two* witnesses, or, without the proper certificate that the assignor was well known to the justice of the peace, or notary public, or other officer taking the acknowledgment, or without the proper evidence that the justice of the peace, or notary, or such other officer, was such *at the time*, and that his signature is *genuine*.

7th. Upon assignments executed by *females*, without evidence, when *femes sole*, that they were twenty-one years of age, and when *femes covert*, without a union in such assignments by their husbands.

8th. Where two assignments exist—one made to one person, but before a perfection of the acknowledgment thereof, a second assignment is executed to another, without any satisfactory explanation as to the first.

9th. Upon assignments where the blank is not filled with the name of the assignee who locates.

10th. Upon assignments where the name of the assignee is inserted in the place occupied by the erased name of a prior assignee, or by an interlineation thereof above such erasure.

11th. Upon assignments executed by a commissioner, or other designated person, alleged to be acting under a decree of a court, without the requisite evidence of his authority as such, and that the decree embraced the property assigned.

12th. Upon assignments by executors, without a duly certified copy of the will, showing that power to sell was conferred on such executor.

13th. Where certificates of location are unsigned by the parties locating.

14th. Without oaths of identity where warrantees or guardians of minors locate for their wards.

15th. Locations by attorneys of assignees, without the powers of attorney accompanying the location.

16th. The locations made by a person whose name entirely differs from that in the assignment, sometimes in the christian name, at others, in the orthography of the surname, and at others, in the presence or absence of an initial letter in a middle name, or otherwise.

You are strictly enjoined to refuse any location where either of the foregoing objections, or others of a like character, exist, requiring every applicant to have his warrant perfected in every respect, so that no subsequent action may be necessary for that purpose.

Should errors or irregularities, such as those above mentioned, occur under this act, in all the instances herein enumerated, except the 8th and 10th, the mere statement of the defect carries with it the requisite knowledge of the method of amendment, viz: by supplying the omission.

In reference to the first of said exceptions, No. 8, the assignor should, in the subsequent assignment, refer to the first one executed, and specify a satisfactory reason for the execution of the second. In reference to the latter of said exceptions, No. 10, there should be an acknowledgment from the person whose name was erased, that it had been erroneously inserted therein, and erased with his knowledge and consent, and that he claimed no right or interest in the warrant; when such person cannot be found, an assignment possessing the defect under consideration, will not be respected by this Office, unless the validity thereof is satisfactorily affirmed by a court of competent jurisdiction. No such erasure and substitution should be made in any case, but the chain of title perfected by a regular assignment; and land officers are therefore prohibited from sanctioning, as heretofore, such alterations in their presence by the parties interested, it being easier and entirely free from objections which may be urged to the other course, for the parties to perfect the chain of title desired, in the regular mode, than first to commit the error referred to, and then furnish the requisite evidence of its correction, amounting in fact to a regular assignment.

Sec. No. 8. Where military warrants under this act shall issue to persons who died *before* or *after* the *date of the warrant*, the following general principles governing in such cases are given:—

1st. Where a soldier shall have died *before* the *date* of the warrant, it is

a nullity, and should be surrendered to the Pension Office, with a view to the issue of a new one to the *widow*, if one exists, and if not, to the *minor children* of the soldier, *in whom alone exists the right to such warrant*, in the respective instances cited.

2d. Where the soldier shall have died *after* the date of the warrant, and before its location or sale, the property therein descends to his *heirs-at law*, *who alone have the right to locate or dispose of the same*, unless express provision is made in the will of said decedent; in which case it follows, of course, the special devise so made. Proof must be submitted of the demise of the warrantee, and the date when, and a certified copy of the will making the devise in question, either in specific terms, or by a devise of his *real estate* generally, which would of course include such warrant. Where no will has been made, in addition to proof of the demise and the period thereof, it should be shown *who* are the heirs, and *only* heirs; and if any of them are *minors*, they must act through their *guardians*, whose appointment is to be proven; and if such action is for the sale of the warrant, express authority to that effect must be shown to have been given by the proper probate court. Where the warrant may issue to minor children, or where persons shown to be heirs-at-law of a deceased warrantee or assignee, unite *personally* in an assignment, it must be shown that at the date thereof they had each attained the age of twenty-one years; and where the said heirs, or any portion of them, are *femes covert*, their husbands must unite in the assignment.

The proof herein referred to, must be attached to the warrant, and should be such as has been taken before the probate court, or other legal tribunal having jurisdiction over the estates of deceased persons, and consist not of the mere certificate of the ministerial officer of such court of the facts referred to, *but of transcripts from the records of such courts*, duly certified and under seal; which transcripts of themselves evidence such facts.

3d. Where the warrant may have been assigned, and the last assignee dies without having located or disposed thereof, the same rules apply in reference to its devise or descent to his heirs-at-law, except that in such case it is liable for the debts of the assignee, the exception in this particular applying to the warrant, or the land located therewith, only while such warrant or land belongs to the warrantee.

4th. These warrants being regarded as *real estate*, are to be treated as such, and hence such action in relation thereto by the local courts as would be applicable to mere *chattel property*, under the law of the particular State in which the decedent had his domicile, will not be sufficient, and cannot be respected.

5th. Where the heirs are scattered, or other causes render it difficult or impracticable to obtain their individual assignments, then, on a decree of the proper court, in a proceeding similar to a petition for partition, the assignment may be made by the commissioner appointed for that purpose, and a certified transcript of the proceedings of the court should be appended to the warrant.

6th. Where the assignment of a warrant is executed by the warrantee or an assignee, or by any of the heirs of either, in a foreign country, it should be done in accordance with the laws of that country authorizing the sale and transfer of real estate, and the attestation of the American consul in such foreign country should be obtained as to the official character and genuineness of the signature of the persons before whom the acknowledgment of the assignment was taken; or, if the official character, &c., of such foreign functionary is attested by a consular agent of such foreign government residing in this country, his official character must be

certified to by the official representative of such foreign government in the United States. Where such assignments are executed in a foreign language, duly authenticated translations thereof must be also furnished.

7th. Widows, as such, of deceased warrantees, have *no* right to locate or assign said warrants; neither have administrators, except where the statute law of a State gives them express authority to dispose of the *realty* of their intestates, and then only for division, as before stated; in which case it should be evidenced by a proper certificate to that effect, on the face of the warrant.

8th. A warrant issued to minor heirs, or assigned by a warrantee to three or more persons, cannot be located if assigned by one portion of the parties to another portion, or to other persons, so as to invest any *one* of the parties with a greater interest than any other. In other words, *each* owner of a warrant, at the time of its location, must have an *equal* share or interest therein.

9th. Where an assignment may have been apparently agreed upon, as evinced by a partial execution thereof, and the assignor dies before it is fully completed by the attesting signatures of two witnesses and acknowledgment before a proper officer, the assignment must be made *de novo* by the heirs-at-law, accompanied by satisfactory explanatory evidence as to the incomplete assignment. Where an assignment has been signed and witnessed but not acknowledged, it can be proved in open court in accordance with the local laws, and in the same manner that a deed for real estate could be established under like circumstances.

10th. Parties in interest are not to be recognized as legal attesting witnesses to an assignment, and the legibility of the names of parties should in all cases be required; neither can an officer take an acknowledgment of an assignment to himself.

As to Locations.

Sec. No. 9. There are three modes by which these locations may be made:

1st. By the warrantee, or other legal owner of the warrant, in person.

2d. By the warrantee, or other legal owner of the warrant, through the agency of this office.

3d. By an agent or attorney of either of said parties.

If the first or second mode is adopted, the application must be made in writing, specifying the tract, land district, or section of country in which the location is desired, and be accompanied by an affidavit according to form No. 1, hereto appended.

Where the third mode is adopted, a power of attorney must be produced, executed by the owner of the warrant in the presence of a witness, according to form No. 2; which power of attorney must be acknowledged or proved, as the case may be, before some officer authorized to take the acknowledgment of deeds, according to form No. 3, or No. 4.

The following fees are chargeable by the land offices, and the several amounts must be *paid at the time of location*:

For a 40 acre warrant,	50 cents each to the Register and Receiver—total	\$1 00
For a 60 " "	75 cents " " " " "	1 50
For an 80 " "	\$1 00 " " " " "	2 00
For a 120 " "	\$1 50 " " " " "	3 00
For a 160 " "	\$2 00 " " " " "	4 00

In all cases the patents will be transmitted to the land office where the location is made, unless special instructions to the contrary be given; in which last case the duplicate certificate of location must be previously

transmitted to this Office ; and in no case will the patent be delivered, either by this or the local land office, without the surrender of this duplicate certificate of location.

As to Assignments and Powers of Attorney.

Sec. No. 10. Assignment No. 5 and the proper acknowledgment, must be endorsed upon the warrant, and No. 6 and the proper acknowledgment upon the certificate of location, and must be attested by two witnesses, acknowledged before a Register or Receiver of a land office, a judge of a court of record, a clerk thereof when authorized to take acknowledgments, a justice of the peace, notary public, or a commissioner of deeds resident in the State from which he derives his appointment ; and in every instance where the acknowledgment is made before either of the officers above specified, except the Register or Receiver of a land office, or the clerk of a court of record, it must be accompanied by a certificate, under seal of the proper authority, of the official character of the person before whom the acknowledgment was made, and also of the genuineness of his signature according to form No. 8.

Where warrants are disposed of under power of attorney, form No. 7 is prescribed for that purpose ; which, however, must *invariably* be endorsed on the warrant, or they will not be recognized.

The acknowledgment of this power of attorney must be taken and certified in the same manner as the acknowledgments of the sales of the warrant or certificate of location hereinbefore prescribed, and must also be *endorsed on the warrant*.

Respectfully, your obedient servant.

JOHN WILSON, Commissioner.

FORM NO. 1.

For the location of the Warrant.

State of ———, County of ———.

Before me, (*a justice of the peace or other officer authorized to take affidavits*) personally appeared (*here insert the name of the warrantee*) who, being duly sworn deposes and says that he is the identical (*here insert the name of the warrantee*) to whom warrant No. ——— for ——— acres under the Act of March 3, 1855, was issued on the ——— day of ———, 185—, and who now applies to locate the same.

(Affiant's signature.)

Sworn to and subscribed before me this ——— day of ———, 185—.

(Officer's signature.)

FORM NO. 2.

Know all men by these presents, that I, (*here insert the name of warrantee,*) of the county of ———, and State of ———, do hereby constitute and appoint ———, of ———, my true and lawful attorney, for me and in my name, to locate land warrant No. ——— for ——— acres of land, which issued under the Act of March 3, 1855.

(Power of substitution may be inserted, if desired.)

(Warrantee's signature.)

Signed in the presence of

FORM NO. 3.

State of ———, County of ———.

On this ——— day of ———, in the year ———, personally appeared

(*here insert name of warrantee*) and acknowledged the within power of attorney to be his act and deed; and I certify, that I well know the said (*here insert the name of warrantee*) and that he is the same person who is described in the within power, and who executed the same.

(Officer's signature.)

FORM NO. 4.

State of ———, County of ———.

I hereby certify, that on this ——— day of ———, in the year ———, personally came before me (*here insert the name of the witness*) and (*here insert the name of warrantee*) and the said (*here insert the name of witness*) being well known to me, was duly sworn by me, and on his oath declared and said that he well knew the said (*here insert the name of warrantee*) and that he was the same person described in, and who executed, the within power of attorney, and his testimony was to me satisfactory evidence of that fact, and the said (*here insert the name of warrantee*) thereupon acknowledged the said power to be his act and deed.

(Officer's signature.)

FORM NO. 5.

For the assignment of the Warrant.

For value received, I, A. B., to whom the within warrant No. ——— was issued, [or assigned, as the case may be,] do hereby sell and assign unto C. D., of ———, and to his heirs and assigns forever, the said warrant, and authorize him to locate the same, and receive a patent therefor.

Witness my hand and seal, this ——— day of ———, 185—.

Attest:

A. B. [SEAL.]

E. F.

G. H.

Of Acknowledgment where the Vendor is known to the Officer taking the same.

State of ———, County of ———.

On this ——— day of ———, in the year ———, before me, personally came (*here insert the name of the warrantee or assignor*,) to me well known, and acknowledged the foregoing assignment to be his act and deed, and I certify that the said (*here insert the name of warrantee or assignor*) is the identical person to whom the within warrant issued [or was assigned, as the case may be] and who executed the foregoing assignment thereof.

(Officer's signature.)

Of Acknowledgment where the Vendor is not known to the Officer, and his identity has to be proved.

State of ———, County of ———.

On this ——— day of ———, in the year ———, before me, personally came (*here insert the name of the warrantee or assignor*) and (*here insert the name and residence of a witness*,) and the said (*here insert the name of the witness*,) being well known to me as a credible and disinterested person, was duly sworn by me, and on his oath declared and said, that he well knows the said (*here insert the name of the warrantee or assignor*,) and that he is the same person to whom the within warrant issued, [or was assigned,] and who executed the foregoing assignment, and his testimony being satisfactory evidence to me of that fact, the said (*here insert the name of the warrantee or assignor*) thereupon acknowledged the said assignment to be his act and deed.

(Officer's signature.)

FORM NO. 6.

For the assignment of the location.

For value received, I, A. B., to whom the within certificate of location was issued, do hereby sell and assign unto C. D., and to his heirs and assigns forever, the said certificate of location, and the warrant and land therein described, and authorize him to receive the patent therefor.

Witness my hand and seal, this ——— day of ———, 185—.

Attest:

A. B. [SEAL.]

E. F.

G. H.

Of acknowledgment where the vendor is personally known to the officer taking the same.

State of ———, County of ———.

On this ——— day of ———, in the year ———, before me, personally came (*here insert the name of the person to whom the certificate of location issued*) to me well known, and acknowledged the foregoing assignment to be his act and deed; and I certify that the said (*here insert the name of the person to whom the certificate of location issued*) is the identical person to whom the within certificate of location issued, and who executed the foregoing assignment thereof.

(Officer's signature.)

Of acknowledgment where the vendor is not personally known to the officer, and where his identity has to be proved.

State of ———, County of ———.

On this ——— day of ———, in the year ———, before me, personally came (*here insert the name of the person to whom the certificate of location issued*) and (*here insert the name and residence of a witness*), and the said (*here insert the name of the witness*), being well known to me as a credible and disinterested person, was duly sworn by me, and on his oath declared and said that he well knows the said (*here insert the name of the person to whom the certificate of location issued*), and that he is the same person to whom the within certificate of location issued, and who executed the foregoing assignment, and his testimony being satisfactory evidence to me of that fact, the said (*here insert the name of the person to whom the certificate of location issued*), thereupon acknowledged the said assignment to be his act and deed.

FORM NO. 7.

Of a Power of Attorney to sell a Warrant.

Know all men by these presents, that I, (*here insert the name of warrantee*), of the county of ———, and State of ———, do hereby constitute and appoint ———, of ———, my true and lawful attorney, for me, and in my name, to sell and convey the within land warrant No. ——— for ——— acres of land, which issued under the Act of March 3, 1855.

Signed in presence of

(Warrantee's signature.)

The form of acknowledgment of a power of attorney and certification to be like those above described for the sale of the warrant.

FORM NO. 8.

Of the certificate of the Clerk of the Court, Judge, or other person who is authorized to certify, under seal, to the official character of the officer who takes acknowledgments of assignments.

State of ———, county of ———.

I, A. B., clerk of the court of ———, in the county and State aforesaid, hereby certify, that John Jones, whose genuine signature is affixed to the above acknowledgment, was, at the time of signing the same, a justice of the peace, (notary public, or other officer,) duly authorized by law to take such acknowledgment, and that full faith and credit are due to all his official acts as such.

Given under my hand and the seal of said court, this ——— day of ———, 185—.

[SEAL.]

A. B., Clerk of the Court of ———.

Where the acknowledgment is taken by a clerk of a court or judge using a seal, no certificate of his official character is required.

No. 616.

Circular.—Locations made by Land Warrants on Pre-emptions, not assignable.

GENERAL LAND OFFICE,
May 23, 1856.

Gentlemen:—By the Act of 22d March, 1852, (No. 190,) land warrants and locations, *not* pre-emptive, are assignable; but you will understand it as the decision of the Department, that where locations are made by *pre-emptors* of their rights under the Act of 4th September, 1841, such pre-emption locations are *not assignable*, for the reason that there is an express inhibition in the said Act of 1841, against the transfer of pre-emptions.

Very respectfully, your obedient servant,

THOS. A. HENDRICKS,
Commissioner.

Register and Receiver.

No. 617.

Circular.

GENERAL LAND OFFICE,
November 1, 1858.

Annexed is a copy of the Act of Congress, approved June 3, 1858, (No. 335,) "declaring the title to land warrants in certain cases."

In virtue of this act, the title to land warrants issued *after* the death of the warrantee vests in the "widow," if there be one, and if there be none, in the heirs or legatees of the claimant.

All such warrants are declared "personal chattels," and may be assigned by "such widows," "heirs," or "legatees," or by the legal representatives of the deceased claimant, for the use of such heirs or legatees only."

To make a warrant, when issued to deceased persons, available, it should be accompanied by a certificate, under seal, from a court having jurisdiction of probate matters, giving the *date* of the *decease* of the claimant.

1st. If he died *before* the date of the warrant, then the name of his "*widow*" should be stated in that certificate, if there be one, whose assignment will be sufficient in the ordinary form.

2d. If no widow, that fact should appear in the certificate of the Probate Court, showing the names of the heirs, and only heirs-at-law, of the claimant, naming such as are *adults*, and such as are *minors*. If all are adults, then their simple transfer is all that is required on the warrant, to which the certificate of the Probate Court must be appended; if some, or all, are minors, they may assign by their guardians, whose letter of guardianship should also be appended.

3d. If the claimant died *after* the date of the warrant, then the title thereto descends according to the law of domicil.

In this class of cases, if the claimant died *intestate*, there should be a certificate from the Probate Court, giving the names of the heirs, and only heirs-at-law, who, if adults, may assign, as in ordinary cases; and if minors, may assign by guardians, as aforesaid.

If the warrantee died *testate*, a certified transcript of the will should be annexed, with an assignment by the legatees, or by the executors, where the will does not specifically dispose of the warrant; but in that case a transcript of the letters testamentary must accompany the transfer.

4th. Or, in any of the foregoing cases of *intestacy*, the warrant may be assigned by the administrator of the decedent, as his legal representative, "for the use of the heirs only;" but the assignment must be accompanied by a certified copy of the letters of administration.

5th. In virtue of the second section of said Act of 3d June, 1858, warrants under the Act of 1855, as well as those issued under previous laws, may be applied to lands "which are subject to entry at a greater minimum than" \$1 25 per acre, by the locator paying, "in cash, the difference between the value of such warrants at \$1 25 per acre, and the tract of land located on."

Thus, for example, a one hundred and sixty acre warrant may be located on one hundred and sixty acres at \$2 50 per acre, and the difference, \$200, paid in cash, or two warrants of eighty acres each, or four warrants of forty acres, may be applied to a one hundred and sixty acre tract, each, however, to be located on a specific legal subdivision of the one hundred and sixty acres, and the difference, \$200, must in all cases be paid in cash.

6th. In regard to all pre-emptions, at *one dollar and twenty-five cents* per acre, it is held, that a pre-emptor may use one, two, or more warrants in locating the land pre-empted, each warrant to cover a specific subdivision of the land, that is, a forty acre warrant must be located on a specific forty acre tract, an eighty on an eighty acre tract, and so on.

When a subdivision is fractional, and overruns the number of acres called for by the warrant, the fractional excess must be paid for in cash.

In all respects, except so far as qualified by the foregoing, the circular and its forms of 3d May, 1855, will govern in regard to bounty land warrants.

The following general sections are added for the information of parties interested.

7th. Patents for bounty land locations are issued in the exact order of date of location; and are sent to the District Land Office for delivery, unless, before the transmission, a party files, in this Office, the duplicate certificate, when the patent will be sent to such address as the owner may indicate.

8th. When the duplicate certificate is lost, the patent will be delivered, upon the patentee filing in this Office his affidavit, stating the fact of its

loss, and that it was not assigned by him, and that he is the present *bona fide* owner of the land.

9th. When an original warrant which had been assigned is lost, and a duplicate warrant is issued in lieu of it, a new assignment must be endorsed thereon from the warrantee, or in default of that, a decree of title must be obtained from a court of competent jurisdiction, and a transcript thereof appended to the duplicate warrant.

THOS. A. HENDRICKS, Commissioner.

Approved, J. Thompson, Secretary of the Interior.

No. 618.

A warrant issued after the death of a Claimant who left a widow and children, enures to the widow.

Where the deceased claimant was a widow, the Warrant enures to the benefit of her heirs or legatees.

Heirs are those who are so declared by the law of the Claimant's domicil.

ATTORNEY-GENERAL'S OFFICE,

October 28, 1858.

Sir:—I have considered carefully the questions which you have submitted on the construction of the law of June 3, 1858, which provides that the title to a land warrant, issued after the death of the person who lawfully applied for it, “*shall vest in the widow, if there be one, and if there be no widow, then in the heirs or legatees of the claimant.*” What is the meaning of the quoted words?

Finding among the papers of the case a very able and ingenious argument, by the Commissioner of Pensions, in favor of the opinion that these words are not to be taken in their ordinary legal sense, but construed by reference to the previous laws on the subject, and having some reason also to believe that you yourself incline to the same view, I have examined the whole system of pensions and bounty lands with some anxiety to reach the same conclusion. But it has been all in vain. The more I look at it, the more clearly I see that every established rule of interpretation supports the opposite doctrine which the head of the land office has propounded.

The *heirs* of a man are those persons who are entitled by the *lex rei sitæ*, to take his inheritable real estate at the time of his death. His legatees are those to whom he has bequeathed his personal property by will. *Heirs* sometimes means children, in common parlance, and the word is to be so understood in a statute, when the context shows that intention to have been in the mind of the legislature. But I am not aware that any reason exists here for taking it in a sense different from that in which it is usually and properly accepted. This act of Congress, then, vests the land in the persons to whom the claimant may have left it by will, and if he has died intestate, then it goes to his heirs; that is, to the persons who are entitled to claim his real estate by the intestate laws.

I do not see anything in the general policy of the previous laws, which would justify us in giving the Act of 1858 a construction not warranted by its plain words. It is true, that all acts on the same subject are to be construed as in *pari materia*, but where the words of a later act differ from those of an older one, the later act must prevail, and give the rule in all cases to which it applies. We are never to suppose that Congress has not changed its mind when it changes its expression of its will. It is not the

older act that qualifies the later, as the Commissioner of Pensions seems to think. The rule is exactly the reverse.

Nor is there any absurdity or injustice in the law if construed according to the words. A claimant of bounty land proves his right, gets his warrant, and dies. It passes by his will, or goes to his heirs or to his next of kin, if there be no will provision which directs that if it be issued after his death, and if he leaves no widow it shall go in the same way. Where is the wrong of that?

You cannot refuse to let heirs and legatees have the land which the law gives them, on the ground that it is unconstitutional. It is constitutional. It does not take away any vested right. It is bounty and not title. Every bounty land and pension law has proceeded on that principle. If it were unconstitutional, you have no right to veto it, whatever power the courts might have to declare it void.

The Commissioner of Pensions intimates that the construction may interfere with the vested rights of those to whom the land would have gone under the previously existing laws. It is clear to me that no bounty land law, nor no pension law vests the title to land or money in the grantees, until they actually receive such bounty or pension. A manifest proof of this is found in the fact that Congress has always, without objection, named the persons to whom it shall go, in case of the death of the soldier before receiving it. This could not be done by Congress, if it were a vested right in the soldier from the date of the law. If it be not vested in the original object of the government's bounty, much less is it vested either after his death or before, in the persons to whom Congress has limited it over in the event of his failure to receive it during his life-time.

It is not worth while now to discuss the vexed question whether Congress has the power to divest a right which has once attached under its own act. If it were unconstitutional, the judiciary might declare it to be void; but I do not see upon what principle a department can veto a law which has been passed by both houses of Congress, and received the sanction of the Chief Executive Magistrate.

In reply to your propositions, I shall therefore say:—

1. That a warrant issued after the death of a claimant who left a widow and children, enures to the widow's benefit alone.
2. Where the deceased claimant was a widow with two sets of children, the warrant enures to the benefit of her heirs or legatees.
3. *Heirs* are those who are so declared by the law of the claimant's domicile.

Yours, very respectfully,

J. S. BLACK.

Hon. Jacob Thompson, Secretary of the Interior.

No. 619.

Where duplicate Warrants have been issued, the original being outstanding, and it is shown that the party to whom the duplicate was delivered, was the owner of the original warrant, the Commissioner refuses to certify ownership.

GENERAL LAND OFFICE,
October 12, 1854.

Sir:—Agreeably to your directions of the 4th instant, endorsed on the letter from F. A. Kownslar, of Lexington, Missouri, of the 23d ultimo, I

have the honor to submit the following, in relation to the subject-matter contained in Mr. Kownslar's letter.

Where duplicate warrants have been issued by the Pension Office, the original being outstanding, and alleged to be lost, or stolen, and proof is made that the party to whom such duplicate was delivered, was the owner of the original warrant, I have refused to endorse them as the property of such person, for the reason, that the proof of such ownership is wholly *ex parte*, and further, that the office would be bound by such endorsement to satisfy the duplicate warrant in the hands of an innocent assignee, who had purchased on the faith of that endorsement, even if the original had been presented in the meantime, and it was found that the duplicate had been obtained by fraud.

When the alleged owner produces satisfactory evidence of ownership, and guarantees such duplicate warrant to his vendee, he will have no difficulty in disposing of it, if his guaranty is sufficient. In such cases, where the original and duplicates are both presented for patenting, we suspend both, till the ownership is settled judicially between the parties; if we certified the duplicates, we would be bound to satisfy them as aforesaid, and the United States would have to search out the fraud, or satisfy both. In the former cases the parties prosecute, in the latter the United States. In the case now presented, the party holding the warrant, will be permitted to locate it, on satisfactory proof of ownership to the land officers, and on that proof, the patent will issue in due course, if the original is not presented in the meantime. The letter from Mr. Kownslar, is herewith returned.

I am, very respectfully,
Your obedient servant,

JOHN WILSON, Commissioner.

Hon. Robert M'Clelland, Secretary of the Department of the Interior.

No. 620.

The Department will not issue a patent to a soldier who sold his discharge, prior to the issue of his warrant.

DEPARTMENT OF THE INTERIOR,
April 17, 1851.

I return herewith the papers enclosed in your letter of the 31st ultimo, in support of the application of Napoleon B. Lowther, for a patent for a tract of land located by a warrant, to which he was entitled, for services rendered in the war with Mexico, notwithstanding he acknowledges having sold his discharge prior to the issuing of the warrant. This Department has already decided not to interfere between parties, in cases like the present, but to leave the matter for judicial examination and settlement. The law, it is true, declares all sales or transfers, made prior to the issuing of the warrant, to be null and void, but as the claimant himself was a party to this illegal Act, the Department does not feel called upon to aid him in annulling a contract, which he entered into of his own volition, for a consideration.

Very, &c.,

A. H. H. STUART, Secretary.

Commissioner of the General Land Office.

No. 621.

Original Warrants and duplicates must both be satisfied, if in the hands of innocent purchasers.

DEPARTMENT OF THE INTERIOR,
November 10, 1851.

Sir:—I have considered the question submitted in your letter of 18th July last, upon the cases presented by Messrs. Chubb and Schenck, and am of the opinion that the cancellation of the warrants referred to, should be removed, upon satisfactory evidence that they are in the hands of innocent purchasers, without notice of the fraud which has been practised.

They are genuine warrants, issued from your office, in due form of law, and any irregularity in the evidence upon which your office acted, or any fraud practised in procuring them, should not affect holders, innocent of the irregularity or fraud.

The faith of the Government is pledged to the extent declared on the face of the warrants, and the carelessness or mistakes of public officers, should work injury only to the Government which employs them, and not to persons who act and invest their means upon the proper presumption that the business of the Government is accurately transacted.

Such warrants therefore, as are regularly issued from your office, and are shown to have passed to the hands of innocent purchasers, must be located and dealt with in every way, as if the evidence upon which they were issued was perfect.

The papers accompanying your letter, are herewith returned.

Very respectfully,

Your obedient servant,

Alex. H. H. STUART, Secretary.

James E. Heath, Esq., Commissioner of Pensions.

No. 622.

*Two Warrants being erroneously issued to the same party, though one should be obtained by fraud, both must be respected.**

DEPARTMENT OF THE INTERIOR,
March 20, 1852.

Sir:—I readily admit that as a naked legal proposition, a warrant or any other instrument of writing obtained by fraud, is not valid. The opinions of various Attorneys-General cited by you, abundantly establish this proposition; but this is only one step towards the conclusion, which you have reached, others must be taken before the warrants returned by you can be vitiated. How stands the case? We have the Pension Office established as a tribunal to adjudicate between the applicant for land bounty and the Government, all the questions necessary to be decided before a warrant can issue. Two of the most important questions to be adjudicated are, 1st, the authenticity, and 2d, the sufficiency of the evidence submitted by the claimants. In these cases the Pension Office has adjudged both these points in favor of the claimant. Its judgment has been finally rendered, and the warrants have issued in conformity with the judgment. Here its jurisdiction would seem to end. It is *functus officio*, and the subject has passed beyond its control.

It would seem as if its powers over the subject were exhausted, and that it had no authority to review its own final judgment.

* See Nos. 636, 637.

The warrant goes forth to the world under the sanction of the government tribunal appointed to decide what cases are genuine and what not, and it is made by law a negotiable instrument. Upon the faith of these endorsements of the claim by the Government, an emigrant purchases the warrant innocently, and without a suspicion of wrong, and locates it on a tract of land in the far west. He sets to work, clears his fields, builds his cabin, fences his pasture and plants his crop, expecting shortly to obtain the patent of the Government for his homestead. A year or more afterwards, a new claimant presents himself at the Pension Office, claiming bounty land for the same service as that in reference to which the first warrant issued. He avers that the papers in the first case are forged, or that the testimony is perjured. Upon these allegations the Commissioner of Pensions undertakes *ex parte*, without notice to the warrantee or his assignee, to declare the first warrant void for fraud. The assignee is living on his land one thousand miles off, and the warrantee may be dead, or if living, and notified of the objection, he has no interest in the subject, and takes no pains to establish the validity of his claim. Is it fair and just that the assignee of the warrant should be ousted of his home by such a proceeding as this, where he has no chance of being heard in his defence, and where there is no trial, and no judge, and no jury?

By what authority does the Commissioner of Pensions undertake to act in such cases? How can he recall the warrant which has been issued? How does he obtain jurisdiction of the subject upon which he has finally acted, and which has passed beyond his control?

But it may be said the Commissioner of the General Land Office can correct it. How? Has he any superior power over the Commissioner of Pensions? Has he any right to look beyond the warrant? Are his duties in their nature judicial in such a case? or are they merely ministerial, and is he bound to look merely to the regularity of the warrant?

I will not pretend to say that cases may not arise, in which it would be the duty of the Department, or of the President, to forbid the issue of the patent. Where there was collusion between the officers and the warrantees, or where the warrant was in the hands of a party to the fraud, there would be no doubt of the duty of the Department, or of the President, to arrest the issue of the patent. The matter is one of executive discretion, in my judgment, and it ought to be exercised in such a way as to do substantial justice. In these cases, no one would doubt that Congress would properly relieve the innocent assignee. Why then subject them to the delay and vexation, and the Government to the expense of such a proceeding, when justice may be done by refusing to interfere with the warrants as they stand. It may be said that such a decision will encourage fraud. It may be so. But a contrary decision would encourage negligence, and destroy the value of land warrants, and the security of land titles.

Sound policy, the settlement of land titles, the prevention of multiplicity of controversies, justice to innocent individuals, all seem to me to concur in requiring that these warrants should be recognized, although the Government may lose some land by their acknowledgment. Let the officers be more vigilant in future. Let them pass no claim until well assured of its authenticity. But when it is once allowed, the act of the authorized agent of the Government must be respected, and he must be held responsible for it. The warrants and other papers which accompanied your letter of the 27th ult., are herewith returned, and you will conform your action to the views herein expressed.

I am, &c.,

A. H. H. STUART, Secretary.

Commissioner of the General Land Office.

No. 623.

A Warrant Locator, though not having paid Register's fees, but having the Certificate of Location, entitled.

DEPARTMENT OF THE INTERIOR,
July 17, 1852.

I have received your letter of the 14th instant, enclosing certain papers representing the injustice practised upon Thomas Downs, by the Register of the Land Office at Stillwater, Minnesota, by permitting Robert Craig to enter a tract of land which Downs had previously located with a bounty land warrant. Notwithstanding that the fees to which the Register was entitled for locating said warrant were not *fully* paid, the regularity and completeness of the location is shown by the certificate of location, given by the Register to Downs; and I am of opinion, that Downs is legally and equitably entitled to the land, and that Craig's entry should be set aside.

A. H. H. STUART, Secretary.

Commissioner of the General Land Office.

No. 624.

No appeal entertained from Commissioner's decision in a case of assignment of a Land Warrant, in regard to which the law confers the power upon him of prescribing regulations.

DEPARTMENT OF THE INTERIOR,
March 16, 1854.

I seriously doubt, whether the Department possesses any control or appellate jurisdiction over the acts of the Commissioner of the General Land Office, so far as this question is concerned, for I find by reference to the Act of 22d March, 1852, (No. 190,) that these warrants are declared to be "*assignable, according to such form and pursuant to such regulations as may be prescribed by the Commissioner of the General Land Office,*" and this view seems to be sanctioned by the opinion expressed by the Supreme Court of the United States, reported in 12 Peters, pages 609, 610.

R. M'CLELLAND, Secretary.

Commissioner of the General Land Office.

No. 625.

In relation to assignment of a Land Warrant and cancellation of a warrant in a given case.

DEPARTMENT OF THE INTERIOR,
April 12, 1855.

I herewith return the papers in reference to military land warrant No. 3801, under Act of 1850, which accompanied your letter of the 16th August last, as also the communication from Messrs. Washburn and Woodman, of the 1st ultimo, which was referred by you on the 10th of that month. After a careful examination of the case, I can see no good grounds for a reversal of the decision made by you in the case in reference to the location, nor that of the Commissioner of Pensions in the cancellation of

the warrant. The warrantee, Charles Smith, having obtained a warrant for his services under the Act of 1847, that subsequently issued in his name, under the Act of 1850, was illegal and invalid, and discovery having been made of the error in the issue of the latter, it was promptly recalled, but not returned. When it was returned to this Office, located by *said Smith*, the warrant was transmitted to the Pension Office, and by the commissioner of that office cancelled, he having no right to claim, as an innocent party, the benefit of a mistake committed by the Pension Office, he being the first wrong doer, in obtaining, knowingly, more than was legally due, and as the location was made, and the land located assigned, prior to the date of the Act of 22d March, 1852, (No. 190,) making land warrants assignable, the assignee of said Smith has no right to claim a patent for the land, inasmuch as Smith, at the time of such transfer, had no right to dispose of the land, any more than he would have to sell the warrant if it had been rightfully and properly issued to him. The purchaser of the land took it subject to all the equities between Charles Smith and the United States, and as laid down in the Attorney-General's opinion of 18th April, 1836, the assignee "even though he had no notice of such equities at the time of the assignment, could require a specific execution of the engagement" "on no other terms than could have been insisted on by his assignor."

These equities were entirely with the United States, inasmuch as the party had no legal right to the land assigned, and even if he had possessed such right, the law in existence at the time of such assignment absolutely prohibited his disposition thereof, no patent having been issued on the location of the warrant.

Respectfully, &c.,

R. M'CLELLAND, Secretary.

Commissioner of the General Land Office.

No. 626.

A party making an invalid location by a Warrant, should generally have an opportunity to purchase the same.

DEPARTMENT OF THE INTERIOR,
March 19, 1856.

As a general rule, a party who makes a location with a land warrant, which location is subsequently set aside, because of some defect in the warrant, should have an opportunity of securing the land by purchase, or by the location of another warrant, but the first location must have been made with clean hands, without any knowledge of the illegality of the warrant, or of objections which would affect the validity of the location.

R. M'CLELLAND, Secretary.

Commissioner of the General Land Office.

No. 627.

Where land is put up between two bidders, the difference between a Warrant and the price bid must be paid in cash.

DEPARTMENT OF THE INTERIOR,
April 4, 1856.

In reply to your letter of the 31st ultimo, on the subject of the receipts of warrants for land, where, by reason of simultaneous application of two

or more persons, the same is, by law, put up at auction among said applicants, I have to state that the warrant is received for the particular tract of land agreeing in denomination with that of the warrant, and the excess of price bid by the successful applicant, above \$1 25, must be paid for in cash.

B. F. Helen, Esq.

R. M'CLELLAND, Secretary.

No. 628.

The assignability imparted to Warrants, under the Act 22d March, 1852, does not affect lands claimed by pre-emption.

DEPARTMENT OF THE INTERIOR,
May 21, 1856.

I return herewith the letter of Hon. G. W. Jones, of Iowa, and its enclosures accompanying your letter of the 13th instant.

The question is raised, under these papers, whether the assignability imparted to military bounty land warrants, and the location thereof by the Act of 22d March, 1852, (No. 190,) operates as a repeal of the restriction, in relation to the assignment of pre-emption, under Act of 4th September, 1841, where such pre-emption is secured by the application of a military bounty land warrant, "in payment" therefor; and it is stated that although your predecessor, in a letter to George H. Wood, of 19th October, 1852, held the affirmative of this question, you, upon a review of the subject, aided by experience, are disposed to hold a contrary opinion, and desire the advice and decision of the Department, on the question mentioned.

I am of the opinion that the Act of 22d March, 1852, was merely designed to declare, that military bounty land warrants, and all legal and valid locations thereof, "*then authorized by law*," should be assignable, and that the proviso in said law, in relation to pre-emptions, authorizing a pre-emptor to make use of such a warrant, owned by him, "in payment for his pre-emption, at the rate of \$1 25 per acre," &c., was intended only to make such land warrant in his hands equivalent to so much cash, and not to make it technically a "location," assignable under the previous provisions of said Act, and against the positive provisions of the Act of 1841, which prohibited any assignment of his right of pre-emption. We are bound to reconcile the two laws if practicable, and as it is fair to presume that Congress did not design to make land warrants superior, or more valuable than cash, or to repeal merely by implication, any prior law in relation to pre-emptions, by simply furnishing a different mode by which they might be secured, I think this object can be fairly and properly attained, by viewing the warrant in the hands of the pre-emptor, as affording him only another means of securing his right of pre-emption, but leaving that right subject to all the restrictions of the law upon which it was based.

R. M'CLELLAND, Secretary.

Commissioner of the General Land Office.

No. 629.

Warrants may be located by Pre-emption Claimants, on unoffered lands, but cannot be received for lands bid off at public sale.

DEPARTMENT OF THE INTERIOR,
July 28, 1856.

Sir:—In reply to your letter of the 14th instant, received this morning, I have to state, that by special Act of Congress, *pre-emption* claimants can make use of land warrants on securing their pre-emptions, although the land may never have been offered at public sale; but that such warrants cannot be received for land bid off at public sale, they being applicable to locations made, of land “subject to private entry” in all instances, except in pre-emption cases as above mentioned.

R. M'CLELLAND, Secretary.

S. Maxwell, Esq.

No. 630.

Excess of Fees received by Land Officers on Military Locations required to be paid over.

GENERAL LAND OFFICE,
August 4, 1856.

Sir:—I have the honor to submit for your direction, a letter from the Receiver at Council Bluffs, Iowa, Enos Lowe, Esq., on behalf of himself and the Register, asking an appeal to the President against the decision of the Department and of this Office, requiring those officers to pay over the excess fees received by them on military locations, under Act 3d March, 1855.

All the papers on this subject are on file in the Department.

With great respect, &c.,

JOS. S. WILSON, Acting Commissioner.

Hon. R. M'Clelland, Secretary of the Interior.

Answered, 9th August, 1856.

“The President and Attorney-General concur with the Secretary.

R. M'CLELLAND, Secretary.”

No. 631.

The Commissioner will require the proper Fees to be paid before he will order Warrants to be located, which may be sent to him.

DEPARTMENT OF THE INTERIOR,
February 19, 1858.

The proviso attached to the fourth section of the Act of Congress, granting bounty lands for military services, September 28, 1850, makes it “the duty of the Commissioner of the General Land Office, under such regulations as may be prescribed by the Secretary of the Interior, to cause to be located free of expense, any warrant which the holder may transmit to the General Land Office for that purpose, in such State and land district as the said holder and warrantee may designate, on any good farming land, so far as the same can be ascertained from the maps, plats and field notes of the

surveyor, or from any other information in possession of the local office." The second section of the Act, March 22, 1852, "to make land warrants assignable, and for other purposes," authorizes the Registers and Receivers of the land offices, thereafter to "charge and receive" a certain "compensation or percentage" * * * * "for their services in locating military bounty land warrants, issued since the 11th day of February, 1847." The sixth section of the Act of 3d March, 1855, "in addition to certain Acts granting bounty land" for military services, also, authorized certain charges on the location of warrants issued under that Act. The proviso in the Act of September 28, 1850, hereinbefore recited, has been modified by these subsequent enactments; and locations cannot be made "free of expense," but are subject to specific charges, to be paid by the locator. The Act of 22d March, 1852, which extended the bounty granted by the Act of 1850, to certain cases, in its fourth section provides, that all the benefits of the last mentioned Act shall be extended to those cases; and the fourth section of the Act of 3d March, 1855, authorizes the location of the certificates or warrants issued pursuant to that Act, according to existing laws regulating the location of bounty land warrants. The rights of the warrantees and assignees of bounty land certificates, issued under the Acts of 1850, 1852, and 1855, appear to be on an equality, therefore, so far as relates to the duties to be performed by executive officers in the location of warrants. The Commissioner of the General Land Office will therefore receive military bounty land warrants issued since the 11th February, 1847, whenever presented at his office by the owner, with the request accompanying them, that they be located in a specified land district; and when the Commissioner is satisfied that proper steps have been taken by the applicant to place the amount of money legally chargeable on effecting the location of the warrant or warrants in the hands of the district officers, he will forward the warrants to the Register and Receiver of the proper district, to be by them located, pursuant to the proviso of the last section of the Act of September 28, 1850. And as it is manifest that this proviso can only be carried out in harmonious conjunction with other enactments, regulating the disposal of the public lands, and the assignment and location of bounty land certificates, the warrants presented at your office can have only such opportunities of location at the district office, after the arrival of the money and warrants there, as the owner could have if personally present and offering said warrants and money on the day that they both first reach the local office in business hours. The Act of 28th September, 1850, contemplates that the particular tracts to be located in this manner, shall be selected or designated by the local officers of any particular district, from the vacant public lands in such district, liable to be located by the specific warrants sent them from your office; and when locations are made by district officers in cases of this kind, they will certify in connection with their usual certificate in each case, that the location has been made "upon good farming land, so far as the same can be ascertained from the maps, plats, and field notes of the surveyor, or from any other information in the possession of the (land) local office.

Whenever, therefore, military land warrants are presented to your office for location, you will "cause them to be located" in accordance with the views above expressed.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 632.

Pre-emptors may use more than one Land Warrant in locating their claims.

DEPARTMENT OF THE INTERIOR,
Washington, June 16, 1858.

Sir:—I concur in the opinion expressed in your letter of the 12th inst., that no legal impediment exists to permitting pre-emptors to use more than one bounty land warrant in locating their claims. The suggestion that the regulations for the guidance of Registers and Receivers be so changed as to conform to this view of the law, is therefore approved.

Very respectfully, your obedient servant,

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 633.

The Commissioner of the General Land Office is not required to examine and approve assignments of Land Warrants, but may, at his discretion, do so.

DEPARTMENT OF THE INTERIOR,
August 9, 1858.

Sir:—I have considered your report of the 3d instant, in the matter of the appeal asked by John Y. Bryant, Esq., from your refusal to endorse your recognition of the assignment of an unlocated military bounty land warrant, No. 50326, for one hundred and sixty acres, (Act 1855,) issued to William Hector. You are not required by law to examine assignments of warrants before the warrants are returned located, and if, in your discretion, you see fit to do so, I shall not interfere to control your discretion, or to review your action.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

On the same subject.

DEPARTMENT OF THE INTERIOR,
August 10, 1858.

Sir:—Your letter of the 22d July last, addressed to the President, and requesting, for reasons stated, that your authority to assign certain duplicate bounty land warrants, issued in the names of other persons, shall be recognized by the General Land Office, has been referred to this Department. I have to inform you, in reply, that warrants were made assignable by the fourth section of the Act of Congress of March 3, 1855, which provides that certificates or warrants may be assigned, transferred, and located by the warrantees, their assigns, or their heirs-at-law. We should be pleased to do any thing in our power to relieve you from the loss and embarrassment incident to the peculiar facts of your case, but there is no law which authorizes us to recognize assignments of warrants, which have been or may be executed by persons other than those named in the act of Congress just quoted. Should we assume to endorse, on the duplicate warrants in your hands, a recognition of your authority to assign them, our act would be supererogatory and void, and fail to afford you the relief which you seek.

J. THOMPSON, Secretary.

Henry Bainbridge,
323 Greenwich street, New York City.

No. 634.

The Act of 22d March, 1852, making Land Warrants assignable, does not apply to locations which have been made under the Pre-emption law.

DEPARTMENT OF THE INTERIOR,
March 25, 1859.

Your report and accompanying papers, touching the proposition of Cyrus Woodman, to surrender a certain patent issued in the name of Daniel T. Bunker, embracing certain lands in the Mineral Point, Wisconsin, District, to which said Bunker had established a pre-emption right, and upon which bounty land warrant, No. 14844, (Act of 1850,) was located, and which was assigned by Bunker to Woodman, upon the duplicate certificate of location, and the application of said Woodman that a new patent issue to him, have been considered.

The fact, that at the date of such assignment, warrant locations on land claimed by pre-emption, were regarded and recognized by the General Land Office as assignable, would seem equitably to entitle the applicant to relief, but in view of the interpretation which has been placed upon the Act of 22d March, 1852, (No. 190,) "making land warrants assignable," such relief cannot be afforded in the manner proposed.

By the Act of 1841, all assignments and transfers of the right thereby secured, are declared null and void. This prohibition is plain and positive, and there can be no doubt that it was intended absolutely to prevent and disallow all assignments of pre-emption rights.

The construction which has been given to the Act of 22d March, 1852, by this Department, and which is now held to be the true one, is, that Congress did not thereby intend to repeal by implication, any of the provisions of the pre-emption laws, and that the same, leaves the right of pre-emption "subject to all the restrictions of the law upon which it is based."

If this construction be the true one, and I am clearly of the opinion that it is, there is no authority vested in this Department to issue a patent to the assignee of a pre-emption right, nor can a patent which has been properly issued in accordance with law, be legally cancelled. Equity cannot be invoked to render lawful that which the law expressly forbids.

The patent to Bunker has been issued in conformity with the established ruling of this Department, and it is not perceived how the same can be properly and consistently cancelled, and another issued, which, according to the accepted construction of the law, is not contemplated or warranted by it.

Whether the assignee, Woodman, can obtain relief in a court of equity, is a question for the courts to determine.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 635.

Lands which were settled upon could not be located with Warrants under the Act of 1855, without the consent of the settler.

The invalidation of the location confers no right upon the settler, however, but the land must be publicly offered for sale.

DEPARTMENT OF THE INTERIOR,
April 8, 1859.

I return herewith the papers submitted with your report of the 5th instant, in the case of Osborn and Schenck, reported from the office at Batesville, Arkansas.

It is clear that the location of the warrant by Schenck was invalid, Osborn being at the time a resident on the land.

Pending the location, Osborn applied to enter the land as a settler, but it is not shown that he attempted, or claimed to bring himself within the pre-emption laws. That application was properly refused under the circumstances, by the local officers, and unless some valid preference right can be shown, on the part of Osborn, I agree with your suggestion that the land in such cases, if you find it proper, or necessary for fair competition among buyers, should be formally restored to market by thirty days' notice.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 636.

*Where a Land Warrant was erroneously issued for one hundred and twenty acres, and the claimant was only entitled to eighty acres, the Warrant may be located by an assignee who is a purchaser for consideration, and without notice, for its full quantity of one hundred and twenty acres. The issuing of duplicate Warrants is unauthorized by law.**

DEPARTMENT OF THE INTERIOR,
January 19, 1860.

Sir:—A duplicate warrant for one hundred and twenty acres of bounty land having been issued by mistake from your office, on the 3d of December, 1855, in the name of William Rowland, private in Capt. Byrnes' company of Tennessee militia, when the evidence plainly shows that he claimed and was entitled to but eighty acres, the question has been brought before me to decide whether it ought to be patented by the General Land Office for the full number of acres guaranteed upon its face, or whether it should be cancelled, and a certificate for the proper amount issued in its stead. Warrants having been made assignable by Act of Congress, this one was duly sold by Rowland to one Benjamin F. Felt, on the 3d of June, 1856; and it is claimed in his behalf, that, being a purchaser without notice that this official certificate of the Government was in any respect defective, he is entitled to a patent for the amount of one hundred and twenty acres.

I have examined into the matter with care, and find my conclusions favorable to the claim of the assignee, Felt. It is evident that the error of issuing the warrant for one hundred and twenty acres was an act beyond the control, and without the knowledge or participation of Felt. He was not bound even to inquire whether Rowland was or was not legally entitled to a larger or smaller number of acres. That he found it upon the market, issued under due form of law, and properly assignable by Act of Congress, was all he had to look to. When he became its legal owner, the Government was his debtor for what it carried upon its face, and when located, he was entitled to a patent for it. In these views, I think I am fully sustained by the able opinion of Mr. Attorney-General Cushing, of March 15, 1856, which deals with this question in pointed language. The opinion of Mr. Attorney-General Wirt, of October 10, 1825, which was cited as maintaining a contrary view, was intended to apply to a different class of cases, and was announced at a period long prior to the time when warrants for bounty land were made assignable by law. Under this conviction, I feel bound to decide that the Commissioner of the General Land Office cannot withhold from Felt his patent for one hundred and twenty acres of land,

* See Nos. 621, 622.

according to the terms of the location made by him. The case might be different if the warrant was still in the hands of Rowland, the original grantee, or the assignment was a forgery.

In connection with this claim, my attention has been drawn to the custom prevailing in the Pension Office of granting duplicate warrants. This system was first sanctioned by my predecessor in office, the Hon. Thomas Ewing, and went into operation under his decision in the case of William S. Morgan, father and heir-at-law of Michael H. Morgan, of date February 5, 1850, at a time when land warrants were not assignable by law. But when considered in its present bearing upon the fact that the duplicate is assignable just as the original is, and is equally negotiable, it must prove to be productive of incurable evils to the Government. Though intended for the accommodation of those who have had the misfortune to lose their warrants, it has unquestionably been used by dishonest persons as a means of procuring a larger amount than they were entitled to, while the negotiable quality of the certificate has enabled them to impose upon innocent purchasers. It is, in addition to this, wholly without the warrant of law, and an exercise of authority which I am unwilling should continue longer. I know of but one instance in which I should consider it proper to grant a new warrant, and that is, where the original is returned to the Pension Office mutilated or defaced. In that case, after cancellation, and every precaution taken against the possibility of its being again used without detection, I think you would be authorized to issue another *original warrant*, conforming in date, amount and every other particular, with the one returned, noting thereon that this is given in lieu of one cancelled.

J. THOMPSON, Secretary.

George C. Whiting, Esq., Commissioner of Pensions.

No. 637.

Where both the original Warrant and the duplicate are located, both must be satisfied except in cases of forgery.

DEPARTMENT OF THE INTERIOR,
January 21, 1860.

Sir:—In the case of Military Bounty Land Warrant, No. 17947, for one hundred and sixty acres, Act of September, 1850, the original of which was issued in 1852, and located in 1854, (February,) in the name of W. J. Barney, as assignee; and a duplicate of which was issued in August, 1854, and located soon after by W. H. H. Bailey, as assignee, after mature deliberation, I have reached the conclusion, that both locators will be entitled to patents for the lands located, on satisfying you by affidavit or credible testimony that they were innocent purchasers, for valuable consideration, without notice of any fraud, in making or procuring the assignment of said warrant and duplicate.

If, however, the assignment of either warrant, has been forged, no right passes thereby, and the location of the warrant is void.

J. THOMPSON, Secretary.

Commissioner of the General land Office.

TITLE XI.

Claims under Indian Treaties.

EXTRACT FROM THE GENERAL REGULATIONS IN RELATION TO THE EXECUTION OF INDIAN CONVEYANCES.

“The deed must not only be acknowledged before a justice of the peace or other officer authorized by the laws of the State or Territory to take the acknowledgment of deeds or other instruments of writing, but such officer must certify that he made known to the grantor the contents of the deed, and explained to him its purport and meaning, and that he freely acknowledged the signing, sealing and execution thereof, and was satisfied and content with the consideration paid, or secured to be paid therefor, and that he executed the said deed, and made the acknowledgment of the same, without any circumvention or undue persuasion of the grantee, or any other person or persons whomsoever. Annexed to such acknowledgment must be a certificate of the clerk of some court of record of the proper county,

The following sections from the Act of June 30, 1834, to regulate intercourse with Indian tribes, relate to Indian lands:—

Sec. 10. *And be it further enacted*, That the superintendent of Indian affairs, and Indian agents, and sub-agents, shall have authority to remove from the Indian country all persons found therein, contrary to law; and the President of the United States is authorized to direct the military force to be employed in such removal.

Sec. 11. *And be it further enacted*, That if any person shall make a settlement on any lands belonging, secured, or granted by treaty with the United States to any Indian tribe, or shall survey, or shall attempt to survey such lands, or designate any of the boundaries by marking trees, or otherwise, such offender shall forfeit and pay the sum of one thousand dollars. And it shall, moreover, be lawful for the President of the United States to take such measures, and to employ such military force as he may judge necessary, to remove from the lands as aforesaid, any such person as aforesaid.

Sec. 12. *And be it further enacted*, That no purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation, or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty, or convention entered into, pursuant to the Constitution. And if any person, not employed under the authority of the United States, shall attempt to negotiate such treaty or convention, directly or indirectly, to treat with any such nation, or tribe of Indians, for the title or purchase of any lands by them held or claimed, such persons shall forfeit and pay one thousand dollars: *Provided nevertheless*, That it shall be lawful for the agent or agents of any State who may be present at any treaty held with Indians, under the authority of the United States, in the presence and with the approbation of the Commissioner or Commissioners of the United States, appointed to hold the same, to propose to and adjust with the Indians, the compensation to be made for their claim to lands within such State, which shall be extinguished by treaty.

A grant made by an Indian tribe northwest of the Ohio, in 1773 and 1775, to private individuals, does not confer a valid title which the courts of the United States will recognize or sustain.—*Johnson and Graham's Lessee v. McIntosh*, 8 Wheaton, 543; 5 Condensed Reports, 503.

The Indian title to their lands in Florida, and the rights and practices of the crown

authenticated with the seal of said court, that the magistrate or other officer before whom such acknowledgment shall have been duly taken, was, at the time, duly commissioned and qualified, and authorized, under the laws of the State or Territory, to take the acknowledgment of deeds and other instruments of writing.

"The deed must be accompanied with a certificate of the Superintendent of Indian Affairs, or the Indian agent, if the facts are within his personal knowledge, of the precise consideration paid or secured to be paid, whether in money or other property, with sums, dates, and such other incidental matters connected therewith, as will show the true character of the contract and transactions; also, if the grantor is the individual for whom the reservation was made, and is capable of taking care of, and properly managing his property, and that the consideration is a full and fair price for the lands intended to be conveyed; or, if the facts should not be within the personal knowledge of the agent, then the affidavit of some disinterested and credible person known to him, who possesses such knowledge, and who has not acted as agent of either of the parties, must be forwarded."

of Spain in reference thereto, examined.—*Mitchell v. United States*, 9 Peters, 711; 11 Condensed Reports, 539.

Entries and grants of lands within the Indian Territory of North Carolina, are void by the laws of that State, though the State had the power to grant the fee, subject to the Indian right of occupancy.—*Lattimer's Lessee v. Poteet*, 14 Peters, 4; 13 Condensed Reports, 306.

A grant of land in the possession of the Indians, by the Spanish authorities in Florida, passed the title of the crown, and made a title to the land, subject only to the Indian title. Such a title is valid as against the United States, under the treaty of cession of February 22, 1819. (8 Stats. at Large, 252.)—*United States v. Fernandez*, 10 Peters, 303; 12 Condensed Reports, 134.

A supplemental article to a treaty of cession of land with a tribe of Indians, reciting that a certain quantity of land had been granted by the tribe to certain persons, and stipulating that those persons should have their right to the said land reserved for them, and their heirs and assigns forever, to be laid off in the southeast corner of the lands ceded, gave a fee simple to the persons named, and their grantee has a perfect title.—*United States v. Brooks*, 10 Howard, 42; 18 Condensed Reports, 445.

Under the treaty between the United States and the Creek tribe of Indians, of March 24, 1832, (7 Stats. at Large, 366,) it was held: 1st. That the twenty sections of land to be selected by the President for the orphan children of the tribe, were not to be taken from the lands reserved for the tribe by the preceding stipulations of the treaty. 2d. That a grandmother, with whom some of her grandchildren resided, was the head of a family, and entitled to a half section of land, as such.—*Ladiga v. Roland*, 2 Howard, 381; 15 Condensed Reports, 211.

The Act of June 30, 1834, (4 Stats. at Large, 740,) vested the ultimate title of the United States to the reservation therein described, in the half-breeds of the Sac and Fox Indians, and this title must prevail against a subsequent patent, unless those claiming under the patent can show that it issued pursuant to some better title than that under the Act of Congress; of this, the recitals in the patent are not competent evidence.—*Marsh v. Brooks*, 8 Howard, 223; 17 Condensed Reports, 565.

The treaty of 1804, (7 Stats. at Large, 84,) between the United States and Sac and Fox Indians, protected the title of a settler on the Indian lands, under a Spanish permit, who, at the date of the treaty, had had open and notorious occupation of the land for such a length of time as to raise a presumption that the Indians had notice of the claim at the date of the treaty.—*Marsh v. Brooks*, 14 Howard, 513; 20 Condensed Reports, 310.

By treaty between the United States and several tribes of Indians, in the Territory of Kansas, the latter ceded certain lands to the United States, on condition that a part of the same should be held in trust by the United States, to be sold at public auction for the benefit of such Indians.

No. 638.

Circular to the United States Registers and Receivers in Mississippi, Louisiana, Alabama and Arkansas.

GENERAL LAND OFFICE,
June 7, 1847.

Gentlemen :—After an examination of the instructions from this Office of the 22d of April, 20th November, 1845, 16th February and 24th July, 1846, and of the proceedings at the local offices, in the reception of certificates of Choctaw Indian claims, I am of opinion that, instead of said certificates being treated virtually as *cash* in the payment of lands, they should be regarded as liable to *location* only. The Secretary of the Treasury concurring in this view of the matter, it is hereby ordered :

1st. That hereafter the aforesaid Choctaw certificates are to be satisfied by *location*, and such certificates are no longer to be treated as money.

When assigned however to a *pre-emptor*, they may be *located* on the tract to which his claim may be fully established.

In all other cases the certificates must be confined in the location to lands "*subject to entry at private sale*" at the usual minimum of \$1 25 per acre, and no selection must be admitted on any lands *reserved*, or withdrawn from market for any purpose.

2d. The *application* for the land selected in satisfaction of a certificate must be *endorsed on the certificate, dated and signed* by the *party* owning it, and if before the expiration of thirty days from the date of selection, no pre-emption declaration is filed, and no valid adverse claim appears, the *Register* will append, under the application, his certificate that the location is correct.

3d. The proceedings are to be altogether distinct and separate from the

Afterwards, by Act of Congress, all the lands in the Territory, to which the Indian title had been extinguished, were made subject to the laws of pre-emption.

Held, that the provision does not include the lands thus reserved by the treaties for public sale for the benefit of the Indians.—(Opinion of Attorney-General, August 12, 1854, vol. 6, p. 658.)

Relation of Indians to citizenship.

Indians are not citizens of the United States, but domestic subjects.—(Opinion, July 5, 1856, vol. 7, p. 746.)

The general statutes of naturalization do not apply to Indians; but they may be naturalized by special act of Congress, or by treaty.—*Ib.*

Indians are not capable of pre-empting the public lands of the United States.—*Ib.*

Half-breed Indians are to be treated as Indians in all respects so long they retain their tribal relations.—*Ib.*

Indians and half-breed Indians do not become citizens of the United States by being declared electors by any one of the States.—*Ib.*

Query, whether half-breed Indians may become citizens by voluntarily leaving their tribal connection, and without any special provision of law in their behalf.—*Ib.*

A treaty with the Indians, extinguishing their title to land, takes effect as to third parties, that is, pre-emptors, town occupants, &c., from and after its ratification.—(Commissioner's letter to Register and Receiver, Omaha, Nebraska Territory, February 10, 1857.)

Indian treaties.

As between the United States and the Indian tribes, the treaties by which Indian lands were ceded to the United States took effect, as expressed by the Attorney-General in his opinion of 12th August, 1854, "from the day on which they were respectively concluded and signed," and the Indian titles were at those periods extinguished. But such treaties did *not* take effect, so as to confer rights upon third parties until *after* the ratification thereof, and hence the lands so ceded to the United States were not pre-emptible till after that time.—(Commissioner's letter to Messrs. Heady and Carr, at Atchison, Kansas Territory, November 4, 1857.)

sales—no patent, certificate nor receipt to be issued, and *no commissions* will consequently hereafter be allowed on this business.

The patents will be based upon the surrendered Choctaw certificates where the locations endorsed thereon are found to be regular and the papers complete.

4th. At the end of each month succeeding the *consummation* of one or more locations by Choctaw certificates, the *Register* will make a separate return to the General Land Office of said certificates, with all the requisite evidence of transfer and location, and of pre-emption, where such cases occur, accompanied by a *monthly abstract* in the form C, herewith.

You are, therefore, requested to consider the instructions heretofore issued as modified, accordingly, and will be pleased to acknowledge the receipt of this circular.

Very respectfully,

Your obedient servant,

_____, Commissioner.

FORM C, No. 1.

Register's Monthly Return of Locations consummated at the Land Office at _____, for the month ending _____, in virtue of Choctaw Indian Certificates, issued under the Act of 23d August, 1842, (United States Stats. at Large, vol. 5, p. 513, ch. 187.)

No. of the Choctaw Certificate.	Name of the party in whose favor the Choctaw Certificate is issued.	Name of the party in whose favor the location has been made in satisfaction of the Choctaw Certificate.	Date of application to locate the tract.	Designation of tract located in satisfaction of Choctaw Certificate.				Remarks.
				Part of Section.	Town.	Range.	Contents.	

Circular to the United States Land Officers in Mississippi, Louisiana, Alabama and Arkansas.

GENERAL LAND OFFICE,
August 19, 1847.

Gentlemen:—By the 3d article of the circular dated 7th June, 1847, providing for the location of Choctaw certificates, the proceedings are required to be “altogether distinct and separate from the sales, no patent certificate nor receipt to be issued,” &c.

This rule relates to the proceedings requisite to satisfy by *location* the area of the *Choctaw certificate*. But as the pre-emption law grants a claimant the right to a “quarter-section,” although its contents may be greater than one hundred and sixty acres, it is deemed proper, on mature consideration of the matter, that, when a pre-emptor applies to locate such a “quarter-section,” the excess should be paid for in money, and it is hereby ordered accordingly.

The like course will be pursued in the location of tracts not claimed by pre-emption, when they exceed the area of the certificates, provided said tracts are subject to entry at private sale at \$1 25 per acre.

In such cases the Receiver will issue his receipt for _____ dollars, in full for _____ acres of the _____ quarter of section _____, township _____, range _____, being an excess in said quarter over the area located by virtue of Choctaw certificate No. _____, in favor of _____, [giving the Choctaw's name,] which receipt he will number and account for as usual, but no certificate of purchase corresponding in number will be issued by the Register for the excess, the transaction being sufficiently identified by his certificate of location.

The Register will observe the following forms in the location of said certificates :

I, A. B., of _____ county, State of _____, assignee of _____ [giving the Choctaw's name] do on this _____ day _____ apply to locate the within Choctaw certificate No. _____ on the _____, containing _____ acres, in full satisfaction of the same.

(Signed)

A. B.

After the expiration of thirty days, if no valid adverse claim appears, the Register will consummate the location by a certificate in the following form :

I hereby certify that the within Choctaw certificate is located on the _____ as above applied for and agreeably to the acts under which it was issued.

_____, Register.

In cases where there is an excess paid for, the Register will add to this certificate : that the _____ acres in said tract, exceeding the area of the Choctaw certificate, are fully paid for per Receiver's receipt, No. _____.

Very respectfully,

Your obedient servant,

_____, Commissioner.

No. 639.

Circular relative to the location of half-breed Dacotah or Sioux scrip, issued under the Act of Congress, approved July 17, 1854. (No. 243.)

GENERAL LAND OFFICE,
March 21, 1857.

Gentlemen :—The Commissioner of Indian affairs, by letter of the 25th ultimo, has advised this Office that *scrip* has been prepared for six hundred and forty persons, as Dacotah or Sioux half-breeds or mixed-bloods, under the Act of Congress of July 17, 1854, above mentioned ; that five pieces of scrip will be issued to each person, as follows ; two for forty acres each ; one for eighty acres, and two for one hundred and sixty acres each, making an aggregate for each one of four hundred and eighty acres, designated thus, for example, in the first case : No. 1 A, forty acres ; No. 1 B, forty acres ; No. 1 C, eighty acres ; No. 1 D, one hundred and sixty acres ; No. 1 E, one hundred and sixty acres. Blank forms of these five pieces are sent herewith, for your information, so that you may have a proper idea of the original pieces of scrip when they are presented for location.

This scrip, as declared on its face, is locatable upon the following described classes of lands, viz :

Upon the Sioux half-breed reservation, which is situated wholly in the two land districts of *Red Wing* and *Faribault*, in Minnesota ; that portion of said reserve situated in the *former* being in townships 111 to 113, inclusive, ranges 10 to 15 west ; that in the *latter* being in townships 108 to 110, ranges 9 to 15.

1st. The scrip may be located by the half-breed, upon any land within this reserve upon which, at the date of the Act of July 17, 1854, he was an actual *bona fide* settler.

2d. Upon any land within said reservation which, at the date of said Act, was not so occupied by a half-breed, or any other person who may have gone into said reservation under authority of law.

To constitute a half-breed or mixed blood an actual and *bona fide* settler within the meaning of the statute, it must be shown by proof satisfactory to you, that he was an occupant by personal inhabitation within said reservation at or before the passage of the Act of July 17, 1854, and in such case he will be entitled to locate his scrip, embracing his improvements, conforming to the legal subdivisions of the public surveys, unless such location interferes with another *bona fide* settler, when each will be allowed to take such subdivisions as will embrace his improvements.

The persons who have "gone into said Territory by authority of law," the land officers at Red Wing and Faribault will understand, are only such white persons as, prior to the passage of said Act of July 17, 1854, had entered said reservation under the Indian Intercourse laws—such as licensed traders, authorized missionary teachers, and other persons in the employ of Government in connection with Indian affairs, and who inhabited the lands and made improvements thereon prior to said Act. Improvements of this class of persons are shielded from the scrip; yet you can do no act in the way of giving title to the white claimants of such improvements because the law has conferred no power on the Executive for this purpose.

3d. The said Act authorizes also the location of scrip "upon any other unoccupied lands subject to pre-emption or private sale." Or,

4th. "Upon any other unsurveyed lands, not reserved by Government, upon which they have respectively made improvements."

Where the scrip may be located on unsurveyed lands outside of the reservation on which the half-breed has improvements, and which is not reserved by Government, his application for location should be accompanied by a diagram and description, denoting natural objects and distances, so as to fix, with certainty, the exact locality wanted, serve as the best notice in our power to settlers, that conflict may be avoided, and enable you, when the public surveys are made, to designate the legal subdivisions embracing the location.

The land selected in satisfaction of a certificate of scrip must be located in the name of the party in whose favor the scrip is issued, and the location may be made by him or her in person, or by his or her guardian or duly authorized agent. The application should be duly attested in each case by the Register and Receiver, and attached to each should be your certificate to the following effect:

"LAND OFFICE AT ———,
" ———, 18—.

"We hereby certify that the within scrip has this ——— day of ———, been located on the ———, containing ——— acres, agreeably to the Act of 17th July, 1854, and by the party duly authorized to make the location.

"Attest: ———, Register.
" ———, Receiver."

No receipt is to be issued to the locator, except in unavoidable cases, where there may be a small excess in the area of the location over the scrip, and in that case it must be paid for, and the Receiver will issue his receipt, which he will number and account for, as in the case of bounty land warrant excess. But no certificate of purchase is to be issued; the scrip and application, instead of certificates of purchase, being the instruments of title which are to be returned to the General Land Office in this class of business.

The Register, however, in the case of excess payments, will append to the application his official statement, that ——— acres of said tract, the excess, has been paid for, per Receiver's receipt, No. ———.

Your proceedings in locating the certificates, and your official returns, are to be kept entirely separate and distinct from other sales and locations. At the close of each month the Register and Receiver will make a separate official return of scrip located, with all the papers on file connected with each location, accompanied by a monthly abstract; form A, herewith.

You will observe that this scrip is *not assignable*, transfers of the same being held void; consequently, each certificate, as hereinbefore stated, can only be located in the name of the half-breed; and such certificates or scrip are not to be treated as money, but located acre for acre.

No fees or commissions of any kind are allowed by this Office for services of the land officers in this matter, such being an incident to their general duties, and you are, therefore, hereby interdicted from charging or receiving any compensation for such services. This scrip is, of course, not applicable to any class of Indian trust lands, but only to unreserved, unincumbered public lands.

Very respectfully,

Your obedient servant,

THOS. A. HENDRICKS, Commissioner.

Register and Receiver at —.

FORM A.

Register's Monthly Returns of Locations made at the Land Office —, for the month ending —, in virtue of Sioux Half-breed Certificates, issued under the Act of 17th July, 1854, (United States Statutes at Large, vol. 10, p. 304, ch. 83.) (No. 243.)

No. of the Sioux Half-breed Certificate.	Date of Certificate.	Acres for which issued.	Name of the person to whom the Certificate is issued.	By whom located.	Date of application to locate the tract.	Designation of tract located in satisfaction of the Sioux Half-breed Certificate.					Remarks.
						Part of Section.	Section.	Township.	Range.	Acres.	

No. 640.

Oneida Indians not allowed to sell timber from the lands occupied by them.

DEPARTMENT OF THE INTERIOR,
December 26, 1854.

I herewith enclose a copy of a letter received from F. Hubeschman, Superintendent of Indian Affairs, in relation to the disposition by the Oneida Indians, of timber and lumber cut upon the lands of that tribe. As I am of opinion that the Indians have no legal right or power to cut, or otherwise dispose of such timber, except so far as may be necessary for their own purposes, I have to request that you will instruct the timber agent at Green Bay, to give notice that after a certain day, (giving them a reasonable time for such notice to be fully circulated among the Indians, and others interested,) that all timber cut, or lumber used therefrom, after that date, will be seized and sold, and that the law in relation to trespasses committed upon the public lands, will be strictly enforced, as in other cases, &c.

Very, &c.,

R. M'CLELLAND, Secretary.

Commissioner of the General Land Office.

No. 641.

Referring to a law of Congress giving Bounty Land Warrants to Indians, held, that in certain cases they may purchase land.

DEPARTMENT OF THE INTERIOR,
May 14, 1855.

Your letter of the 11th instant has been received, referring to an entry of forty acres of land made at the land office at Ionia, Michigan, in August, 1854, by two Indians, and presenting the question, "whether, under the laws of the United States, Indians being considered in the light of minors or wards, can, as such, acquire title to land *in fee*." In the State of Michigan, where this entry was made, the Constitution recognizes as a citizen, every civilized male inhabitant of Indian descent, a native of the United States, and not a member of any tribe. In this particular case, therefore, it may be that the parties purchasing are citizens of that State; but independent of that fact, in view of the late law of Congress, as to the right of Indians to receive bounty land warrants, and of course to locate the same, and receive patents therefor, I cannot think there should be any hesitation in carrying into grants, the sale to the two Indians above referred to, or that which may be made by any other person of like character, of land open to purchase by the first applicant.

Respectfully, &c.,

R. M'CLELLAND, Secretary.

Commissioner of the General Land Office.

No. 642.

Indians retaining tribal relations are not entitled to the right of Pre-emption.

*Held by the Commissioner, that half-breeds, without tribal connection, are not excluded from such right.**

GENERAL LAND OFFICE,
April 29, 1856.

Sir:—On the 24th October, 1834, this Office held, under a decision of the President, that "Indians residing within the Choctaw cession should be left to the rights secured to them by the treaty, and that pre-emption rights did not therefore accrue to them."

On the 3d September, 1850, Commissioner Butterfield decided, that John Waisly, a Chippewa Indian, was not entitled to a pre-emption, "for the want of citizenship," and that filing a declaration of intention to become a citizen could not avail the party, for the reason that the naturalization laws "do not apply to Indians domiciliated on our soil, but only to foreigners, who owe an allegiance to an authority distant and separate from that of the United States," and he adds, "it has been long settled, that Indians are not entitled to a right of pre-emption."

On the 20th May, 1854, Commissioner John Wilson, instructed the Register and Receiver at Sault Ste. Marie, "that where Indians have ceased to draw annuities, are not members of any tribe, and are recognized as citizens, by the Constitution and laws of the State in which they reside," the question whether "pre-emption rights will accrue to them, is open and under advisement."

In a communication to this Office, of date 14th May, 1855, it was held

* See decision of Secretary Thompson, in the Superior City case, (No. 493.)

by yourself, that civilized Indians, resident in the State of Michigan, might purchase land, "open to purchase by the first applicant."

I find no other decisions of the Department proper, or of this Office, bearing upon this subject. Retaining a connection with his tribe, an Indian can neither acquire nor hold a separate property in land. Such an ownership would be inconsistent with its laws or usages. Property in land is in the entire tribe. *Johnson v. McIntosh*, 8 Wheaton, 593. His relation to the tribe, and his subjection to its customs and laws, are incompatible with that separate individual settlement, improvement, and use of the land, contemplated by the pre-emption laws. As a member of the tribe, he is under a divided sovereignty, subject both to the laws of the tribe and the regulations prescribed by the United States. If his connection with the tribe has ceased, either by its dissolution or his withdrawal, he is then subject only to the laws of the United States, and of the State or Territory in which he may reside. He is not a foreigner, and owes no allegiance to authority independent of the United States. He may not be a citizen of the United States, in the highest sense of that term, but he is, within the meaning in which it is used in the Act of 1841. He enjoys all the rights which are held by white persons born within the United States, save, perhaps, such as are purely political. He is competent to acquire, hold, and, in the absence of disabling statute, to dispose of real estate, and is entitled to the protection of the Government; and, under the Constitution and laws of the State of Wisconsin, if civilized, may exercise the right of suffrage. See *Jackson ex dem. Smith v. Goodell*, 20 Johns. 188, where the subject is very fully discussed. * * * * *

It is my opinion, that the fact that the pre-emptors are half-bloods of an Indian tribe, but without tribal connection, and resident among white people of the State of Wisconsin, would not, if established, exclude them from a right of pre-emption, under the Act of 4th September, 1841.

With great respect,

Your obedient servant,

THOS. A. HENDRICKS, Commissioner.

Hon. R. McClelland, Secretary of the Interior.

Extract from a letter of Commissioner Hendricks, in relation to the Superior City case.

No. 643.

Persons residing on the lands ceded by the Chippewa Indians at the date of the treaty, were provided for by the 10th article thereof, but none others.

DEPARTMENT OF THE INTERIOR,
November 6, 1858.

Sir :—The papers pertaining to the pre-emption claim of Frederick Larmarge to the east half southwest quarter, and lot No. 2 of section 5, township 49 north, range 14, west, contested by Michael S. Bright by virtue of a trader's license, and the east half southwest quarter contested by William C. Baily as part of his pre-emption claim, which were submitted to this Department by your letter of the 14th of September last, are herewith returned.

Said Bright claims the right to enter the land under the 10th article of the treaty with the Chippewa Indians, on the 30th September, 1854, which reads as follows, to wit, "Article 10. All missionaries and teachers and

other persons of full age, residing in the territory hereby ceded, or upon any of the reservations hereby made by authority of law, shall be allowed to enter the land occupied by them at the minimum price whenever the surveys shall be completed, to the amount of one quarter section each." There is no proof that said Bright was residing upon the land at the date of the treaty or at any other time. Any right which accrued under said article would have relation to the date of the treaty. The alleged occupancy by Bright's agent or clerk, commenced on the 12th October, 1854, subsequent to the date of the treaty. But occupancy by an agent would give the claimant no right to the land *under* said article 10; and Bright has established no valid claim to the land specified. The decision of the Register and Receiver in which you concur, is hereby reversed.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 644.

The Shawnee lands became subject to pre-emption settlement, on and after the date of the President's order, setting aside the "surplus," &c.

DEPARTMENT OF THE INTERIOR,
Washington, December 20, 1858.

Sir:—I have carefully considered your report of the 10th instant, in regard to the date after which legal settlements may have been made upon lands remaining to the United States between the western limit of the State of Missouri, and a parallel line thirty miles west therefrom, and within the cession, by treaty of 1854, with the Shawnee Indians. The fifth article of said treaty provides that "no white persons or citizens shall be permitted to make locations within said limits, until after all the lands shall have been surveyed, and the Shawnees shall have made their selections and locations, and the President shall have set apart the surplus."

The three things to be done before the lands are open to settlement, viz., the making of the surveys, the completion of the selections, and the setting apart the "surplus" by the President, (see 2d article of the treaty,) I understand as consummated on the 2d November, 1857; and am therefore of opinion that the public lands within the limits above mentioned, became subject to settlement, with a view to pre-emption, after that day.

Very respectfully, your obedient servant,

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 645.

Article 10 of the Chippewa treaty of 30th September, 1854, confers rights of pre-emption upon those persons only who were "residing" on the land at the date of the execution of the treaty.

DEPARTMENT OF THE INTERIOR,
April 13, 1859.

Sir:—My attention has been called by your letter of the 19th January last, to the case from the Buchanan, Minnesota, Land Office, involving the claim of Aaron Crozier to enter by pre-emption a certain tract of land, part of which is claimed adversely by Charles Kimball, under the 10th

article of the treaty with the Chippewas of Lake Superior of 30th September, 1854, which is in these words.

"Article 10. All missionaries and teachers and other persons of full age, residing in the Territory hereby ceded, or upon any of the reservations hereby made by authority of law, shall be allowed to enter the land occupied by them at the minimum price whenever the surveys shall be completed to the amount of one quarter section each." A permit or trader's license may show that the party to whom the same was issued, was lawfully in the Indian country, but it is no evidence that such person was residing there. Neither do the facts that an individual was the proprietor of goods which were for sale under a license issued to him, and that a trading post was actually occupied by his agents who were transacting business for him, furnish any basis for a valid claim to enter land under article 10 of said treaty. The beneficiaries intended and provided for thereby, were those who were residing upon the land claimed by them at the time said article was written and inserted in the treaty, and they could not be subsequently increased in number. Although it is stipulated by the 13th article that "this treaty shall be obligatory on the contracting parties as soon as the same shall be ratified by the President and Senate of the United States," yet it cannot be thence inferred that it was meant to extend the time of "*residing*," as employed in the 10th article. The treaty when ratified related back to the time of signing, and the ratification only confirmed the claims of those who were residing upon the land at the date of the execution of the treaty.

This case will be remanded to the local office, with instructions to the Register and Receiver to require strict proof to be produced as to whether the said Kimball was actually residing upon the land he claims, at the time the treaty was made and entered into, and if it shall appear that he was not so "*residing*" at that time, then his claim to enter said land must be rejected, and the application of said Crozier to enter the land he claims by pre-emption, may then be considered on its own merits, and in view of such proof as may have been or may be adduced in support thereof. The papers in the case you will find herewith enclosed.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 646.

Classification of sections of Indian Reserves, &c.

DEPARTMENT OF THE INTERIOR,
May 23, 1859.

Sir:—Referring to the 11th section of the Act, making appropriations for sundry civil expenses of the Government, (No. 358,) for the year ending the 30th June, 1860, I deem it advisable to state the principles which, in my opinion, should form the basis of the rules and regulations referred to.

The separate sections allotted to individual Indians should be classified under two heads, viz; those which lie within, and those which lie outside of the limits of a tribal reservation. The former should be declared forever inalienable by the reservee or his heirs, except to a member of his tribe, or to the United States; the latter should be alienable under such restrictions as will prevent fraud and imposition, and secure to the reservees the full value of their land.

I have to direct that you prepare "rules and regulations," for the issu-

ance of patents to such Indians in Kansas Territory as may be entitled thereto, under treaty stipulations, and the Act of Congress already quoted. These regulations should be drawn up in conformity to the principles here laid down, and when completed, will be submitted for the approval of this Department.

Very respectfully, your obedient servant,

J. THOMPSON, Secretary.

Hon. A. B. Greenwood, Commissioner of Indian Affairs.

No. 647.

Under the Act of May 19, 1858, providing for pre-emptions, on the Lake Pepin Reserve, to defeat the pre-emptor, a consent to the location of scrip subsisting and unrevoked, must be shown.

DEPARTMENT OF THE INTERIOR,
Washington, May 24, 1859.

Sir:—After a review of the case, wherein John Murray claiming by pre-emption certain tracts in the Sioux half-breed reservation, Faribault, now St. Peter's District, Minnesota, under the Act of Congress of May 19, 1858, (No. 330,) appeals from your decision in favor of a location of Sioux half-breed scrip, issued to Antoine St. Antoine, No. 162 east, for one hundred and sixty acres, by Alexander Faribault, as attorney for said half-breed, I am of the opinion that the case should be remanded for a full investigation before the local officers, of which both Murray and Faribault should have due notice; said investigation to be had, under the views hereinafter expressed.

I remark, that the evidence taken before the magistrate, tends to show, and the local officers have reported, that Murray would be entitled to pre-emption, had he not consented to the location of the scrip. His pre-emption right is thus *prima facie* good, unless the affirmation of another proposition is established against him, viz: that the land was located with his consent. There is a date for the scrip location to be made and to attach, and on that date, the consent of the settler must be subsisting and unrevoked. I cannot think that it was the design, or is the effect of the law of May 19, 1858, to compel this Department to examine into all the negotiations, or verbal or written agreements, that may have been made by adverse claimants by way of compromise, and with a view of merging their claims to a piece of land.

In this case, the application to locate the scrip, is dated the 18th May, 1857; to defeat the *prima facie* right of the pre-emptor, a consent subsisting and unrevoked, must be shown to have existed on that day.

Further, as the law directs us to pay respect to the settlement, and disregard the location, unless made with consent, the location must not only have been made, but must have been good in other respects, if an adverse settlement under the law is shown to exist. In this case, the authority of Faribault to locate the piece of scrip in question, is not spread before us. If on file, it should have been forwarded, and if not on file, the original or a certificate copy of a record, dating back to the location, or earlier, must be filed.

The papers in the case, are now returned to your office. So far as they bear on the question of consent, they tend to show the existence of such consent only at dates subsequent to the filing of the scrip.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 648.

The Act of 17th July, 1854, in relation to the Lake Pepin Reserve, protected settlements of half-breed Indians. The Act of 1858, legalized those made by white settlers.

Claims of land within "plowed lines," no other occupancy being shown, will not be allowed.

South Wabashaw, may be entered as a town, if the occupants did not consent to the location of scrip.

DEPARTMENT OF THE INTERIOR,
June 14, 1859.

Sir:—From your report of the 15th of April last, and the papers which accompanied the same, it appears that a certain tract of land, lying within the limits of what was formerly known as the "Lake Pepin Reserve," in Minnesota, designated as the northeast quarter of section 32, and the west half of the northwest quarter of section 33, township 111, of range 10 east, is claimed by the corporate authorities of the town of Wabashaw, under the Act of 23d May, 1844, (No. 79.) Adverse claims to said land, are preferred on the part of certain holders of half-breed Indian scrip, issued under the Act of July 17, 1854, (No. 243.)

You have decided against the claim of the town authorities; and that said land is subject to scrip location.

From this decision, an appeal has been taken to this Department, and I now proceed to consider the facts and questions involved in said case.

Each half-breed settler within said reserve, is protected by law, from adverse pre-emption rights, or scrip location, to the extent of his settlement and occupancy, and has a valid claim, and a superior right to the particular subdivision or subdivisions thus held. The Act of July 17, 1854, recognized and protected the settlements of the half-breeds. The Act of 1858, (No. 330,) confirmed their rights in this respect, and at the same time legalized settlements made by white settlers antecedent to its passage. It is incumbent on the Department to administer both of these laws, so as to accomplish the objects contemplated by them, by securing to each class of settlers the rights intended to be conferred. But neither the Act of 1854, nor that of 1858, recognized any right or title of the half-breeds, to all the lands embraced in any claim lines which they may have marked out. Such claimants were not restricted to any particular or specified tracts or bodies of land, but each might locate a part of his scrip upon the tract occupied by him, and the residue elsewhere. The claim of the half-breeds to lands within their "plowed lines," cannot be regarded. The law evidently contemplated, that the scrip should be located according to the legal subdivisions, and in order to constitute settlement and occupancy thereof, it is necessary that residence, cultivation, or improvement, be shown. It was intended to confer on each half-breed Indian settler, an exclusive right to locate scrip upon the land occupied by him, should he desire so to do, but that right did not extend to circumjacent lands, which were settled on or in the occupancy of half-breeds, or white settlers, unless their consent were given to such location.

What are the facts of this case? Did the settlement or occupancy of any of these half-breed claimants extend over the land, which is now claimed under the Act of 1844, by the town authorities of Wabashaw? That none of said half-breed Indians, were actually settled, or resided upon any of the legal subdivisions thereof, is conceded. Was there any such actual occupancy by them as the law contemplates, and will protect? Does any of this land appear to have been improved, cultivated or used in such manner

as to indicate real occupancy, by said half-breeds or either of them? The evidence does not satisfy my mind, that prior to the establishment of the town, or since, any such improvement was made thereon, or that any such act was performed by any of said claimants as is requisite and essential to denote actual occupancy by them. As both the settlements of white persons and of half-breeds, are protected by law, there is but one way in which scrip can be legally located on lands thus occupied, and that is by the consent of the settler.

This case may be remanded to the local office, with instructions to the Register and Receiver to enquire into and take testimony, as to whether such consent was given by the settlers or occupants of the land in controversy.

If it shall appear that no such consent was given, said land is subject to entry, under the Act of May 23, 1844, and upon a full compliance with said law, by the proper authorities of the town, they may be permitted to enter the same, in accordance with its provisions.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 649.

In relation to the issue of Patents to Indian reservees in Kansas.

DEPARTMENT OF THE INTERIOR,
June 30, 1859.

Sir:—Your letter of the 23d ult., in regard to the issuance of patents to Indian reservees in the Territory of Kansas, has been received. The law therein referred to, provides that patents shall issue “upon such conditions and limitations, and under such guards and restrictions as may be prescribed by said Secretary” (of the Interior.) Under the authority of this law, I have to direct that patents shall issue to all Indian reservees in Kansas Territory, containing simply a condition, that “the said tract shall never be sold or conveyed, (by the grantee,) or his heirs, without the consent of the Secretary of the Interior, for the time being.” The patents should issue in this form, to all reservees, without regard to the competency of the individual, or the location of the reserve.

Rules and regulations shall be prepared, setting forth the terms upon which the Secretary will consent to a sale, by an Indian reservee. These should be based upon the classification made in my letter of the 23d ult. (No. 645.) I agree with you, however, as to the propriety of discriminating between competents and incompetents, although, even in respect to the former, due care should be taken to protect them against fraud.

Very respectfully,

Your obedient servant,

J. THOMPSON, Secretary.

Hon. A. B. Greenwood, Commissioner of Indian Affairs.

No. 650.

Where a half-breed Indian occupied and cultivated land in the Lake Pepin Reserve, an adverse Pre-emption Claim thereto cannot be maintained.

DEPARTMENT OF THE INTERIOR,
August 25, 1859.

Sir:—The questions presented by the appeal of A. T. Sharpe, Esq., from the decision which you have rendered, in favor of the scrip location of Antoine Grignon, and against the right of John Mahony to pre-empt the south half of the northwest quarter of section 15, township 110, range 10, in the St. Peters, Minnesota, District, have been considered, and the papers received with your letter of the 5th ultimo, are returned.

It appears that Mahony settled upon the northwest quarter of said section 15, in the year 1855, and that in July, 1858, he filed his "declaration of pre-emption" therefor, in accordance with the provisions of the Act of Congress of May 19, 1858, which declares that settlements made theretofore on the body of land "known as the half-breed tract," lying on the west side of Lake Pepin and the Mississippi river, "are valid, so far as they do not conflict with settlements made by half-breeds, and that the settlers shall have the benefit of the pre-emption laws of the United States, any location of half-breed scrip thereon after the date of the settlement, notwithstanding."

It further appears, that on the 18th day of May, 1857, scrip was located on the north half of said northwest quarter, in the name of Nancy Buisson, a half-breed, and it is alleged, that said Nancy has, since the year 1845 or 1846, occupied and cultivated a portion of said tract, and that on the same day, other scrip was located on the south half of said northwest quarter, in the name of Antoine Grignon. It is not claimed, however, that said Antoine, who is a half-breed, ever occupied or resided upon the land so located. If the allegation, that Nancy Buisson was an occupant and cultivator of the north half of said northwest quarter, is established by satisfactory proof, the settlement of Mahony will conflict with that of the said half-breed and his claim to that extent must be rejected.

It has already been decided, that mere "plowed lines," without any other occupancy or use, can attach no valid rights of half-breeds to the lands surrounded thereby. The land claimed by Buisson must have been *actually cultivated* or *used* by her, otherwise the settlement of the pre-emption claimant would entitle him to that portion of the land in controversy with her. As against Antoine Grignon, Mahony would also seem to be entitled to the land in controversy between them, provided his improvements upon it were of such a character as to meet the requirements of the law.

In view of all the circumstances, I think the case should be remanded to the local office, with instructions to the Register and Receiver to require all the parties in interest to produce further proofs in support of their respective claims, after giving due notice of the time and place of hearing.

Very respectfully, &c.,

MOSES KELLY, Acting Secretary.

Commissioner of the General Land Office.

No. 651.

Rules and regulations to be observed in the execution of conveyances of lands which have been or shall be assigned in severalty to Indians within the Territory of Kansas, and for which patents shall be issued in conformity with the 11th section of the Act of Congress, entitled "An act making appropriations for sundry civil expenses of the Government, for the year ending the thirtieth of June, eighteen hundred and sixty," approved March 3, 1859, (No. 358.)

Individual Indian reserves are divided into two classes, those which are, and those which are not, included within the boundaries of a tribal reservation. The former are inalienable except to Indians by birth, members of the tribe to which the reservee belongs; the latter are alienable under the following conditions:

1. The deed or instrument of conveyance must be executed in the presence of two subscribing witnesses, and acknowledged before the agent, within the limits of whose agency the reservee resides, and, when presented for approval, must be accompanied by the following certificates, viz:

1st. A certificate signed by two of the chiefs of the tribe to which the reservee belongs, setting forth that the grantor is the identical individual to whom the land was originally granted, or his (or her) sole surviving heir; that he (or she, as the case may be,) is competent to manage his (or her) affairs, and to dispose of his (or her) property, and that they think it advisable that the land should be sold. And in case the original reservee shall have died leaving more than one heir, the identity and competency of all such heirs must be set forth in the certificate.

2d. A certificate from the agent, for the tribe to which the reservee belongs, that the contents, purport, and effect of the deed of conveyance were explained to and fully understood by the grantor or grantors; that the consideration specified therein is a fair price for the land; that the same has been paid to the grantor or grantors, in his presence, in gold or silver coin of the United States, and that the conveyance is in every respect free from fraud or deception.

2. Incompetents will be permitted to make sale of their land in the same manner as those of the competent class, except that their incompetency must be stated in the certificate of the chiefs, and the certificate of the agent must set forth that the purchase-money has been paid to him for the use of the grantor or grantors, and that he holds the same subject to the order of the Commissioner of Indian Affairs.

3. If the reservee does not reside within the bounds of an Indian agency, the deed of conveyance may be executed before a justice of the peace, or other officer having legal jurisdiction in the premises, whose official character must be properly authenticated. If the grantor or grantors should be known to such officer, he must certify that he (or she) is fully competent to dispose of his (or her) property, and manage his (or her) business affairs; that the consideration specified was a fair price for the land at the date of the sale; that the same was paid to the grantor or grantors, in his presence, in gold or silver coin of the United States, and that the entire transaction is free from fraud or deception. If the aforesaid facts are not known to such officer, they must be verified by the affidavits of at least two credible persons who are cognizant of these facts, whose veracity must be certified by such officer, and the testimony and all papers pertaining to the conveyance, must be properly authenticated under the seal of a court of competent jurisdiction.

The value of the land described in the deed must be appraised by at least two disinterested persons of integrity and sound judgment, who, after a full inspection of the premises, will, under oath, set forth the market price thereof, and the character of such appraisers for veracity should be certified by a proper officer.

4. A diagram prepared by a competent surveyor, or an authenticated copy of the official plat of survey, indicating the land intended to be alienated, must be furnished for the use of the Indian Office.

5. No reservee will be allowed to sell more than three-fourths of the land assigned to him (or her) under the treaty provisions, except in special cases, where circumstances to be determined by the Secretary of the Interior may seem to require a relaxation of the rule.

6. No sale or conveyance which does not substantially conform to the foregoing regulations, will receive the approval of the Department.

DEPARTMENT OF THE INTERIOR,
Office Indian Affairs, December 17, 1859.

The foregoing rules and regulations, designed for the government of the respective parties in the execution of deeds of conveyance pertaining to the alienation of lands assigned in severalty to Indians within the Territory of Kansas, are respectfully submitted to the Secretary of the Interior, with a recommendation that the same may be approved.

A. B. GREENWOOD, Commissioner.

DEPARTMENT OF THE INTERIOR,
December 19, 1859.

The aforesaid rules and regulations are hereby approved, as recommended by the Commissioner of Indian Affairs.

J. THOMPSON, Secretary.

TITLE XII.

California and Private Land Claims.

No. 652.

Neither a decree of the courts, nor the survey, nor the patent, in case of lands held in California, under a Mexican grant, is conclusive on any body but the Government, and the patentee.

The rights of third parties are expressly saved by the law.

ATTORNEY-GENERAL'S OFFICE,
September 29, 1859.

Sir:—Certain citizens of Butler County, California, have sent in their petition to the General Land Office, praying that no patents be issued for the ranchos called “Flugge” and “Hernandez.” These were tracts of land in California, granted by the Mexican Government before the conquest. The grants were declared good by the Commissioners appointed

Where there was a grant of land in California, subject to the condition that the grantee should build a house upon it, and have it inhabited within a year from the date of the grant; and also, that he should obtain a judicial possession and measurement or survey of it, the evidence shows sufficient reasons for a non-compliance on the part of the grantee.—*United States v. Reading*, 18 Howard, 1.

The court again decides, as in *Fremont v. United States*, 17 Howard, 560, that a mere omission to comply with these conditions would not necessarily amount to a forfeiture, unless there were circumstances which showed an intention to abandon the property.—*Ib.*

Although the title did not become definitive until the grant was approved by the departmental assembly, yet, immediate interest passed by the grant from the Governor, whose duty it was, (and not that of the grantee,) to submit the case to the departmental assembly, and if they should reject it, then to lay the case before the Supreme Government of the Republic.—*Ib.*

Where an imperfect Spanish title to land in Missouri was confirmed by the Commissioners, but the claim required a survey, to ascertain its limits and boundaries, evidence cannot be received, that the survey was erroneously made, by showing possession by the confirmee, of land in a different place than that where the survey placed his land.—*Stanford v. Taylor*, 18 Howard, 409.

In the case of an imperfect Spanish title to land in Louisiana, a confirmation by Congress is inoperative, unless the title of survey under it will enable the court to ascertain the specific boundaries of the land. If, before the survey in such a case, an entry is made, and a patent taken out for land which conflicts with a subsequent survey of the confirmed concession, the patentee has the better title.—*Ledon v. Black*, 18 Howard, 473.

Where there was a grant of land in California, in 1843, with three boundaries, and the quantity stated, and in 1845, a new grant was made, which was approved by the departmental assembly, subject to the condition that within four months a map of the land should be made; this was a condition subsequent, the non-compliance with which did not work a forfeiture of the grant, but only left the land liable to be denounced.—*United States v. Vaca*, 18 Howard, 556.

Where there was a grant of land in California, made by the Governor to the Secre-

to investigate them. The same decree was made afterwards by the District Court. An appeal was taken to the Supreme Court but it was dismissed.

A person who claims land in California, under a title from Mexico, is entitled to have a patent for it issued out of the General Land Office here, whenever he shows that his claim has been finally confirmed, by the Commissioners, by the District Court, or by the Supreme Court, if he at the same time accompanies that proof with a survey, certified and approved by the Surveyor-General of California. The claims now under consideration have been finally confirmed, and the proper certificate of the Surveyor-General, has been produced. These proceedings are conclusive on you. They put the right of the claimants to a patent on grounds, which you have no authority or power to contest. The 13th section of the Act of March 3, 1851, is too plain to admit of dispute.

When the survey covers lands belonging to other persons, (as is alleged to be the case here,) their remedy is to petition the district judge, for an

tary of the Government, and neither the petition nor the patent stated the quantity, but the concession and direction by the Governor to the proper officer, to issue the patent, limited the quantity to eleven square leagues; this concession and direction constitute a part of the evidence of title, and are sufficient to make a good grant for that amount.—*United States v. Larkin*, 18 Howard, 557.

On the 26th November, 1835, the Governor of California gave an order that the petitioner should have a tract of land, without specifying the boundaries, which was done by an order having the formalities of a definitive title, on the 27th. This latter document must govern the case. The decree of 1824, and the regulations of 1828, forbid the colonization of territory comprehended within twenty leagues of the boundaries of any foreign State, and within ten leagues of the sea coast, without the consent of the supreme Executive power. This restriction did not prohibit grants of land within those limits, to natives of the country.—*Arguello v. United States*, 18 Howard, 539. See also, *United States v. Cruz Cervantes*, 18 Howard, 553.

Where a claimant of land in California produced documentary evidence in his favor, copied from the archives in the office of the Surveyor-General, and other original grants by Spanish officers, the presumption is in favor of the power of those officers to make the grants.—*United States v. Peralta*, 19 Howard, 343.

California.

1. The regulations for the colonization of the Territories of the Government of Mexico, made 21st November, 1828, in pursuance of the act of the general Congress, August 18, 1824: *Provided*, 1st. That the governors of the territories should be empowered to grant vacant lands, among others, to private persons who may ask for them, for the purpose of cultivating and inhabiting the same. 2d. That every person soliciting lands shall address to the Governor a petition, expressing his name, country and religion, and describing, as distinctly as possible, by means of a map, the land asked for. 3d. The Governor shall proceed to obtain the necessary information, whether the petition contains the proper conditions required by the law of the 18th August, 1824, both as regards the land and the petitioner, in order that the application may be at once attended to; or if it be preferred, the municipal authority may be consulted whether there be any objection to the making of the grant. 4th. This being done, the Governor will accede or not to such petition, in conformity to the laws on the subject. 5th. The definitive grant asked for being made, a document, signed by the Governor, shall be given to serve as a title to the party interested, wherein it must be stated that the grant is made in exact conformity with the provisions of the law, in virtue of which possession shall be given. 6th. The necessary record shall be kept, in a book provided for the purpose, of all the petitions presented and grants made, with maps of the lands granted, and a circumstantial report shall be forwarded, quarterly, to the Supreme Government.—*United States v. Combustion*, 20 Howard, 59.

2. Where there was no evidence with respect to a grant of land in California, that any one of these preliminary steps had been taken, this court cannot confirm the claim.—*Ib.*

3. The decisions of this court in cases of claims to land in Louisiana and Florida, are not applicable where precise and recent regulations exist, directing the manner in which land shall be granted.—*Ib.*

injunction, and if he grants it, the patent will be stayed, until the injunction is dissolved. Nothing of the kind has been done. The patents must issue.

But neither the decree of the courts, nor the survey, nor the patent, is conclusive on any body but the Government and the patentee. The rights of third parties are expressly saved in the act of Congress. If therefore, there be any ground for the complaint made in the petition from Butler county, those who claim a title adverse to the patentees have still a chance to establish it in the proper courts of the State.

There is nothing in this case which authorizes me to interfere. The Attorney-General has a certain supervisory control over the investigation of these California land claims, while the contest upon them is between the United States and Mexican grantees. But his power is gone when the Government ceases to have an interest and private parties alone are concerned.

I am, most respectfully yours, &c.,

J. S. BLACK.

Hon. Jacob Thompson, Secretary of the Interior.

4. There are also strong grounds of suspicion with respect to the *bona fides* of the grant in question; but as the claimant may not have had an opportunity of producing evidence in the court below, the case will be remanded to that court for further proceedings.—*Ib.*

5. As the Act of Congress passed on the 3d of March, 1851, does not specify the time within which an appeal must be made to this court from the district courts of California, the subject must be regulated by the general law respecting writs of error and appeals. Either party is at liberty, therefore, to appeal from such a decree, within five years from the time of its rendition.—*United States v. Pacheco*, 20 Howard 261.

6. Under the sixty-third rule of this court, an appellee, in a case from California, may docket and dismiss according to that rule; but a new appeal may be taken at any time within five years, or it may be that the record may be filed by the appellant at the same term at which a certificate or record had been filed by the appellee, and the case dismissed.—*Ib.*

7. After a case has been thus docketed and dismissed at the instance of an appellee who is a claimant of land, if a patent should be taken out, it will still be subject to be reviewed by this court at any time within the five years above mentioned.—*Ib.*

8. Where a petitioner files a claim to land in California, before the board of commissioners created by Congress, the intervention of rival claimants is a practice not to be encouraged.—*United States v. Fossat*, 20 Howard, 413.

9. Where there is no natural boundary or descriptive call for the termination of lines of a tract of land, and the quantity of land called for in the grant is "one league of the larger size, a little more or less," the survey must only include a league. The words "a little more or less" must be rejected.—*Ib.*

10. The grant is for one league of land, to be taken within the southern, western and eastern boundaries designated therein, and to be located at the election of the grantee or his assigns, under the restrictions established for the location and survey of private land claims in California by the executive department of this Government.—*Ib.*

The public authorities of California under the laws of Mexico, had power to make grants of mission lands.—*United States v. Ritchie*, 17 Howard, 525; 21 Condensed Reports, 656.

The evidence is satisfactory that Alvarado, the Governor of California, granted a tract of land to the extent of eleven leagues, to John A. Sutter, in 1841. Although the original grant has not been produced, yet there is sufficient proof that it once existed and was destroyed by fire. A draft of the grant prepared by the Governor is found in the archives, and the grant was recorded in the county registry of deeds; and this, together with the other evidence in the case, shows that it was genuine, and also the maps which accompanied it. Although the map was incorrect in its lines of latitude, yet it can be located by reference to natural objects. But another grant purporting to be issued by Micheltorena in 1845, for the surplus of the former grant, being an additional quantity of twenty-two leagues, does not stand in the

No. 653.

Where two Mexican grants of land in California have been confirmed, pursuant to the provisions of the Act of Congress of 3d March, 1851, the older grant, which has also the earlier confirmation, is entitled to a preference in location, by the Surveyor-General, if the two grants lie afoul of each other.

The survey of the older grant and confirmation, should be returned for patenting; and it is lawful to survey to the junior grant so much land as lies within its proper sketch, and is not interfered with by the location of the senior grant, though the quantity thus surveyed be less than the quantity of land confirmed to such junior grant.

The action of the Surveyor-General will not, however, preclude a future investigation by the proper judicial tribunals.

ATTORNEY-GENERAL'S OFFICE,
November 9, 1859.

Sir:—From your letter dated May 9, 1859, and the documents which accompany it, I learn that Manuel Jimeno received from the Mexican Government, in due form, a grant for eleven leagues of land lying upon the Sacramento river. The shape and situation of the land granted are described in the act of concession, and defined more exactly by a map accom-

same position. Supposing it to be genuine, yet the situation of Micheltorena at its date would impair its validity. He had been driven from the capital, was not in the peaceful exercise of his official authority, and was shortly after compelled to abdicate. The grant was not recognized by his successors, nor was it placed in the archives. It was not a valid claim at the date of the treaty of Guadalupe Hidalgo.—*United States v. Sutter*, 21 Howard, 170.

Where there was a petition for land in California, addressed to Micheltorena, the Governor, which was referred by him to the Secretary, Jimeno, and by him to Sutter, and there is no evidence that these papers, with Sutter's certificate, was ever returned to the Governor, or sanctioned by the authorities of the State subsequently, the evidence is not sufficient to support the claim, although sanctioned by what is called Sutter's general title.—*United States v. Nye*, 21 Howard, 408. (See also *United States v. Bassett*, 21 Howard, 412.)

The jurisdiction of the Board of Commissioners for the settlement of private land claims in California, and of the courts of the United States on appeal, extends not only to the adjudication of questions relating to the genuineness and authenticity of the grant, and others of a similar character, but also to all questions relating to its location and boundaries; and does not terminate until the issue of a patent conformably to the decree. It is the duty of the Surveyor-General to cause all private claims which shall be finally confirmed, to be accurately surveyed and to furnish plats of the same.—*United States v. Fossatt*, 21 Howard, 445.

The Supreme Court of Missouri has decided that the treaty by which Louisiana was acquired, imposed only a political obligation upon the Government of the United States to perfect titles, rights and claims, originating under France and Spain, and when the government confirms lands to one claimant it extinguishes any mere inchoate title in another.—*Mackay v. Dillon*, 7 Missouri Reports, 7. (See also on the latter point *Harrold v. Simmonds*, 9 Missouri Reports, 323; and *Cottle v. Sydnor*, 10 Missouri Reports, 763.)

Also, that the confirmation of a claim of six thousand arpents of land, will not entitle the conferee to hold a larger quantity, as included by the metes and bounds fixed by a subsequent survey, especially if such survey interferes with the claim of another person, which has been confirmed.—*Dent v. Bingham*, 8 Missouri Reports, 579.

As to boundary, survey and description, see the following Missouri cases. *Strother v. Chisty*, 2 Mo. Reps, 148; *Page v. Schiebel*, 11 Mo. Reps. 167; *Joyal v. Ripley*, 19 Mo. Reps. 660; *Carondelet City v. McPherson*, 20 Mo. Reps. 192; *Papin v. Hines*, 23 Mo. Reps. 274; *St. Louis v. Toney*, 21 Mo. Reps. 243; *Magmir v. Taylor*, 25 Mo. Reps. 484.

panying the expediente. Subsequent to the date of Jimeno's grant, another grant was made to John Bidwell, of a tract called Colus, also lying upon the Sacramento river. The precise location of this grant is also ascertainable without difficulty, from the description contained in the grant and desíño. The two being compared together it becomes very clear that one lies afoul of the other. Both parties have obtained decrees of confirmation by the Board of Land Commissioners, by the District Court of the United States for California, and by the Supreme Court. Jimeno, or those claiming under him, not only has the advantage of his competitor in the priority of the grant, but was first in obtaining the several decrees of confirmation. Without repeating the questions which you propound to me, I shall answer all the points that have been raised in your Department concerning all the rights of these claimants with respect to surveys and patents.

Both parties are not and cannot be entitled to the land which both of them claim. The title of one is beyond all question paramount to that of the other. It cannot be that the junior grant is equal to the senior. At the time that the concession was made by the Government of Mexico of the Colus tract, Jimeno was the owner of the land in controversy, and the Government had no right which it could convey. The Jimeno title then, being in every respect prior in point of time, must be regarded as better in law and equity than the other. It must take the interference, to the total exclusion of the other claim.

It is the plain and manifest duty of the Surveyor-General to locate the whole of the Jimeno ranche just as it would have been located, if no opposing claim to the land it covers had been set up. The owners of the Colus grant are entitled to whatever land may still be left within the proper limits of their grant after satisfying the calls of the Jimeno tract. The Surveyor-General may, however, run on the ground, and designate in some proper way upon his plat, the lines which would have been assigned to the Colus ranche in case it had not been interfered with. But he cannot return for patenting more than one of the two conflicting surveys of the same land.

It follows from what I have said, that it is lawful, in a case like this, to survey to the claimant, under the junior grant, less land than was confirmed. The elder grant must have what it calls for, and the junior can only take what is left.

These views coincide not only with the instructions issued by your Department to the Surveyor-General, but also with the 13th section of the Act of March 3d, 1851, (No. 189,) which gives to the Surveyor-General the same power and authority as are conferred on the Register of the Land Office and Receiver of the public moneys of Louisiana, by the 6th section of the Act of March 3, 1831. The provision in the Act of 1831, referred to in that of 1851, is one which authorized the Register and Receiver to decide between the parties, when they are unable to agree among themselves, in such manner as may be consistent with the principles of justice. To decide, in that act, means to determine which of the two claimants has the better right, according to the principles of justice. The Surveyor-General's decision, however, is not final, and does not preclude a future inquiry by the proper judicial tribunals. While therefore he should in this case return the Jimeno survey for patenting, it is proper that he should do nothing which will obscure the right of the other party or prevent a fair investigation of it.

In am, very respectfully,
Yours, &c.

J. S. BLACK.

Hon. Jacob Thompson, Secretary of the Interior.

No. 654.

No grants have been made by Congress to individuals, of gold mines in California.

Lead and Copper mines in the northwest, pass to Grantees.

DEPARTMENT OF THE INTERIOR,
February 6, 1856.

Congress, in regard to the gold mines of California, has not made any special grants to individuals, nor passed any general law by which special rights thereto, by individuals, might be acquired. Under the Spanish or Mexican law, it is contended that no rights to said mines within the Mariposas claim were acquired by the original grant, the basis of the present patent, * * * * * It is proper further to state, that the present policy of the United States in relation to the lead and copper mines of the northwest, is understood to be at variance with that pursued by the Mexican government. Here, wherever a grant has been made of land, and any lead or copper mines were discovered in them, the latter passed to the grantee.

R. M'CLELLAND, Secretary.

Hon. Franklin Pierce.

No. 655.

Case of the Novato Rancho.

1. *Quantity and boundaries. Where the quantity confirmed by the decree of the court, is less than that ascertained by survey, to lie within the boundaries specified, the effect of the decree is to give the quantity to be located within the boundaries.*
2. *As a general rule, in case of Mexican grants, the quantity which is certain, and can be exactly ascertained, may be regarded as controlling boundaries which are uncertain, which have never been officially surveyed, and concerning which there is room for dispute.*

DEPARTMENT OF THE INTERIOR,
January 13, 1859.

Your report of the 23d ultimo, with your proposed instructions to the Surveyor-General of California, in the matter of the approval of the survey of the Novato rancho, have been carefully considered.

The Surveyor-General reports that the survey in question was made under instructions from his predecessor, and includes about three square leagues of land, whilst the decree of confirmation, after specifying boundaries, contains these words also, "containing two square leagues a little more or less." He reports that his decision would be, if not otherwise directed, that the claimant "has a right to select, in satisfaction of his confirmation, out of the prescribed boundaries, a tract of two leagues, having a compact form."

Your proposed reply in the matter recites, that there were two grants in this case, "one by Governor Alvarado, on the 16th of April, 1839, the other by acting governor Jimeno, on the 13th November of the same year, both describing the tract granted by the name of Novato, the same boundaries recited in both, and also sketched in the *desiño*, and the contents given, as two square leagues "a little more or less, with the usual *sobranse* clause." Rejecting the words "a little more or less," as having no meaning in a system of surveys like our own, the question arises, whether the Surveyor-General should approve a survey by boundaries which include about

three square leagues, or should cause a survey to be made, which would restrict the claim to two square leagues, the quantity mentioned. If it were impossible to ascertain and mark the boundaries called for, with proximate certainty, without including more than the area of two square leagues, it may still be said, that by the usual *sobrante* clause in a Mexican grant, the quantity of land granted is stated, and the officer who gave possession, was required to have it measured, in conformity to law, leaving the surplus which might remain, to the nation, for such purposes as might best suit it. The limitation of quantity, thus rendered certain, became a controlling condition of the grant, although the boundaries described might include more. In this case, the Surveyor-General, on whom the duty of surveying confirmed claims is by law devolved, on turning to the original grants and other papers on file in his office, finds that all these documents, as well as the decree itself, indicate to him a tract of two square leagues in extent. The water lines, and other boundaries specified, inform him of the geographical location of the tract, and if it is not possible for him to find the tract, which has the required size and the limits stated, it is possible to find a tract embracing the proper quantity, and lying within the limits named, and this, it is, in my opinion, his duty to do. As allusion is made in your proposed communication, to my decision of the 8th July last, in the case of the San Pedro rancho, I take occasion to remark, that in that case, when reference was had to the documents on file, it was found that there had been a grant by the Spanish authorities, which had been recognized by Mexico, for the "estate of San Pedro," with fixed boundaries, and without limitation of quantity or reservation of excess, to the nation; and as there was no limitation of quantity in any of the muniments of title from the Spanish or Mexican Governments, and the boundaries of the rancho, as set forth in the decree, were well known, and had been accurately ascertained, the statement of quantity in the decree was regarded as descriptive, and as controlled by the notorious and well ascertained boundaries of the lands, of which confirmation was made. On the contrary, in this case, when we revert to the original muniments of title, we find that the land was twice granted by quantity, and that the same quantity is mentioned in the decree of the court. As a general rule, in cases of Mexican grants, the quantity which is certain, and can be exactly ascertained, may be regarded as controlling boundaries, which are uncertain, which have never been officially surveyed and marked, and concerning which there is room for dispute. My decision upon the survey of the San Pedro rancho, should not therefore be regarded as a precedent, in any case which lacks, or falls short, in respect to any one of the several strong reasons in that case, for regarding the confirmation as of a tract with determinate boundaries, within which more land was found than the quantity mentioned in the decree of the court. Your instructions to the Surveyor-General, in the matter of the survey of the Novato rancho, will be drawn so as to conform to the views above expressed. The papers submitted with your report, are now returned.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 656.

Showing amount of Money appropriated for surveying Lands in California, extent of Surveys, &c.

GENERAL LAND OFFICE,
February 12, 1859.

Sir:—I have the honor to acknowledge the receipt, by reference, of the letter addressed to you, by Hon. Chas. L. Scott, under date of the 7th instant, and in reply to the seven several interrogatories, have the honor to report as follows:—

1st. "The amount of money appropriated for the survey of the public lands and private land claims, in the State of California, from the time the office was first established up to the present time," is \$1,639,516 58.

2d. "The number of acres surveyed, of the public lands," is 25,000,000.

3d. "The number of Spanish grants finally surveyed." This can *only* be ascertained by application to the Surveyor-General's Office, at San Francisco. The number for which approved surveys have been returned to this Office, is one hundred and eighteen.

4th. "The number of Spanish grants finally confirmed." Unknown to this Office, but the information may be obtained from the Attorney-General of the United States.

5th. "The number of Spanish grants patented," is forty-five.

6th. "The number of Spanish grants unsurveyed." This, like the third interrogatory, can *only* be answered by application at the Surveyor-General's Office, in California.

7th. "And the amount of appropriation asked for, and the amount appropriated for each year, by the several respective Surveyor-General's." The appropriation asked for, and the amount appropriated for each year, by the respective Surveyor-General's, is as follows, viz.:

Asked for,	\$2,592,350 00
Appropriated and apportioned,	1,639,526 58

As will appear from statement "A," herewith enclosed.

Your obedient servant,

JOS. S. WILSON, Acting Commissioner.

Hon. J. Thompson, Secretary of the Interior.

No. 657.

Case of the Rincon de la Musalacon.

1. *The effect of the Decree of Confirmation in this case, is to give the claimant two square leagues.*
2. *Where the outline map, or desiño, represents a rectangular figure, within the sides of which the granted land is found, and the boundaries as named in the decree comprise a much larger area than that quantity, it is a proper case for preserving, in the form of the two leagues located, a resemblance in shape to the shape of the tract embraced within the recited boundaries, and indicated by the maps. The land should not be located in a narrow strip, extending entirely through the centre of the tract shown by the maps, and taking up the lands on both sides of the river.*

DEPARTMENT OF THE INTERIOR,
February 23, 1859.

The survey of the rancho "Rincon de la Musalacon," and the other papers, submitted with your report of the 14th instant, are herewith returned.

In this case, the decree of confirmation, the petition and grant, are all for the quantity of two square leagues; and the quantity clearly controls the terms descriptive of boundaries. The decree uses multifarious descriptions of the land confirmed, all subject to the condition of quantity. The land is declared to be "known by the name of Rincon de la Musalacon," * * * "being the same which was granted by Governor Pio Pico to Francisco Berryesa, on the 2d May, 1846;" and it is also declared, that it "is bounded as follows: Beginning at a conical hill known as the Devisidero corner, to the rancho of Jerman Peña, and running thence a little north of east, at right angles across the valley and Russian river with the line of said Peña, to the sierra on the opposite side of the valley, thence northwesterly along the sierra to the mouth of a cañon, formed by the mountains coming in close to the river, thence crossing the river to the mountain or sierra on the other side, and southerly along said sierra to the point of beginning, containing two square leagues and no more, being the same tract of land described in the original grant and map, copies of which are contained in the transcript in this cause, and to which reference is hereby made." This description of boundaries is not found in terms so detailed and specific in the grant, nor does it appear to be drawn from the map; and it is an obvious remark, that in the absence of any regular survey, these boundaries could not be expected to contain the two square leagues of lands, no more and no less, which it has become, by the confirmation, the duty of the Surveyor-General to locate. Reverting to the grant, it is found to give to Berryesa two leagues, known by the name of "Rincon Musalacon," "bounded on the south by Don Jerman Peña, and on the other side by the sierras, to be comprised within the limits prescribed in the design or map." On the map, the hill "known as the devisidero," seems to be shown, from which a line is drawn at right angles, or nearly so, across the valley and river, and forms the No. 1 side of the rectangular figure approximating a square, within the four sides of which, one, two, three, four, as numbered on the map, the two leagues are to be found. Side No. 3, opposite No. 1, is a line parallel to No. 1, and drawn through the cañon where the river passes through the converging sierras, or hills; and sides No. 2 and No. 4 are arbitrary lines, at right angles to the other two. Within the region of country embraced by this rude sketch, the two leagues must be located conformably to the general regulations. From a glance at the plat of survey now before me, and a comparison thereof with the original *desiño*, the strong presumption arises, that the limits of the latter have been exceeded, and the regulations respecting compactness of form, and conformity to lines of the public surveys, disregarded in the survey made by deputy Tracy.

If sierras are sought as boundaries, on the sides parallel, or nearly so, with the river, it seems probable that hill lands may be found between the mountains and the valley, some of which might be included in the location, and the rectangular shape of the claim preserved, which would, in my opinion, accord more strictly with the grant and confirmation, than the survey of a narrow belt on both sides of the river.

The survey now before me should, as you suggest, be returned to the Surveyor-General, for a re-examination of the case, that he may ascertain with certainty the true locality of the "devisidero," of the map, grant and decree; and with a view of reducing the claim to a form more compact, and more in conformity with the lines of the public surveys.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 658.

*Pastoria de las Borregas and Posolmi.**Method of proceeding where there is an alleged interference of boundaries between two confirmed claims.*DEPARTMENT OF THE INTERIOR,
April 27, 1859.

After a careful examination of the affidavits filed, and upon which is asked a suspension of the issuance of a patent, in the case of the survey of that portion of the California land claim, known as "Pastoria de las Borregas," which has been finally confirmed to Martin Murphy, Jr., I am of the opinion that the patent should not issue, until after a review by the Surveyor-General of the questions of location and conflict, after due notice to the parties, or their attorneys of record, who claim that the present survey interferes with their rights as claimants of the adjoining rancho, under the Posolmi, or Ynigo's grant, and includes part of their land.

That there is an interference, or at least that a division line between the two claims must be established, is evident from any and all the papers accompanying your report. The decree in this case assumes the probability of an interference, and it protects the Ynigo claimants by the following stipulations, viz., "the place belonging to the Indian Ynigo, and known as 'Las Animas,' is excepted from this confirmation." It appears that Las Animas has been confirmed, but has not been conclusively located, and the attorneys for that claim complain of the present survey as interfering with the boundaries of the Ynigo claimants; and allege that said survey was made without notice to them or their clients. I think that the affidavits in the case, show the insufficiency of the notice, if any was given; and Mr. Halleck makes oath that the deputy surveyor, after he had returned the plat of survey, admitted to him that no notice had been given, either to the attorneys or claimants of Las Animas. The 13th section of the Act of Congress, March 3, 1851, and the 3d section of the Act of March 3, 1853, prescribes that, in the survey and location of private land claims in California, the Surveyor-General shall have the same power and authority as are conferred on the Register of the Land Office, and the Receiver of the public moneys, by the 6th section of the Act to create the office of Surveyor-General of the public lands for the State of Louisiana, approved March 3, 1831. The 6th section of that Act provides, "in relation to all such confirmed claims as may conflict, or in any manner interfere with each other," that the officers, * * "shall in their decision, be governed by such conditional lines or boundaries as have been or may be agreed upon between the parties interested, either verbally or in writing, and in case no lines or boundaries be agreed upon between the parties interested, then the said Register and Receiver are hereby authorized to decide between the parties, in such manner as may be consistent with the principles of justice." In order to the proper execution of the duty, by these Acts imposed on the Surveyor-General of California, in cases wherein he finds that there is a conflict or interference in any manner, or is so notified by a party in interest, he should, in the first place, ascertain if any conditional lines or boundaries have been or are likely to be agreed upon between the parties in interest, and secondly, if none be agreed on, he must then decide "between the parties," in a manner that is consistent with the principles of justice. It appears to me that a decision between parties, in the manner prescribed, involves a hearing, by the Surveyor-General, of both or either of the parties to the contest, if they desire to be heard, and a fair opportunity to both to present their respective claims.

You will therefore return all the papers in this case to the Surveyor-General, with instructions to give both parties a fair hearing, and make his decision between them. I am unable to arrive at the conclusion, that there is no conflict or interference in the lines or boundaries of these two confirmed claims; the decree of confirmation assumes that there is; the claimants and attorneys of "Las Animas," confidently assert that there is; and the affidavit of the deputy surveyor, filed by Mr. Murphy, admits that there is—for he says, that the question of conflict was fully considered by him.

Very respectfully, your obedient servant,

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 659.

The Rancho "De Tito" or "Quito."

1. *A private survey, which has been made by the claimants, which conforms well to the map and expediente, which the claimants have regarded as a correct delineation of their land, or have encouraged the public so to regard it for many years, is entitled to be respected by the Surveyor-General, as far as practicable, in making a final survey of the claim.*
2. *Where the decree of the court sets forth that the confirmed land has been cultivated and possessed for many years by the claimants or their original grantees, such cultivation and possession may be followed for the purpose of solving doubts as to boundaries, or the proper location of a confirmed quantity within boundaries.*

DEPARTMENT OF THE INTERIOR,
Washington, July 23, 1859.

Sir:—The case of the Rancho de Quito, or Tito, Santa Clara county, California, comes before me under peculiar circumstances. In March, 1857, instructions were issued by Surveyor-General Hays, to deputy C. C. Tracy, who made a survey and returned it. Opposition to its approval was made to Surveyor-General Hays, and afterwards, before Surveyor-General Mandeville. The latter found the survey in his office, without any official action endorsed, and having examined it, and having visited the locality, under date of the 4th May, 1858, forwarded a diagram of it to your office, with an expression of his opinion in favor of its approval. In September, 1858, Mr. Hays made an affidavit, which has been placed on file by the contestants, in which he states, that shortly after the survey he examined it in connection with the expediente and map attached thereto, and declined to approve said survey, because the location was, in his opinion, incorrect, and did not comport with the description of the land, as shown by the expediente and map attached. This opinion was confirmed after a subsequent examination of the locality, on a personal visit for that purpose.

After consideration, you have formed an opinion favorable to Tracy's survey; and with the expression of that opinion submit all the papers in the case for my advice.

On a review of the matter, I find serious objections to a decision by the Department favorable to the survey, particularly in the present condition of the matter.

First. As the survey has never been actually approved, and it does not appear that the contestants are aware of any expression by your office in favor of the same, there has been no opportunity of knowing what they

would desire to present before a final disposition of the case. My present action, therefore, ought not to be conclusive, but merely advisory.

Secondly. On an examination of the case, as presented by the papers, I think that it would be proper to return them all to the Surveyor-General, for a full hearing of the claimants and contestants before him, or before some officer authorized to administer oaths and take depositions, to be agreed upon by the attorneys on both sides; and on such hearing, a fair opportunity should be given for both parties to be present, and cross-examine the witnesses produced by the opposing party; for it would be unsafe to render a decision in an important case upon the voluntary affidavits that have been procured and filed heretofore. The merits of the survey made by Mr. Tracy, are not established to my satisfaction. Deputy Tracy and Surveyor-General Mandeville, are of the opinion that the claimants are entitled to the location indicated by the survey; Col. Hays and deputy Lewis, are decidedly of the opposite opinion; and all have been upon the ground, and examined the land in person.

The complaint of the contestants against the survey is, that it extends too far to the northeast, and embraces valuable improvements of squatters, who settled in the belief that the lands they have improved, belonged to the United States. They allege that a line was surveyed in 1851, for the northeast boundary of said rancho, by the authority of Forbes, the agent of the claimant of record, which gave the claim another location; and that the survey under the decree of confirmation ought to be confined to the lines of the Forbes survey, or conformed thereto as nearly as is consistent with quantity. They urge, with great force, that the shape given to the rancho by the private survey of Forbes, is a near approximation to the shape indicated by the *desiño*, and includes a sufficient quantity of land. It may be added, that the Forbes survey may have been regarded at the date of confirmation, by the agent or attorneys of the confirmer, if not by the Board, as a fair exponent of the *desiño*, and affording information in regard to the situation of the rancho. A further objection to the survey, as at present viewed, is, that there is a strong indication by an inspection of the *desiño* and the several sketches among the papers, that all the boundaries named in the decree and grant may become boundaries of the rancho, by a closer adherence to the location given by the Forbes survey. The decree of the Land Commissioners names the rancho of Prado Mesa, as bounding Quito on the north, that of Sebastian Peralta as abutting on the south, with the sierra for a western limit, and the Mission of Santa Clara on the east—reference being made to the grant and map—and the land embracing an oak grove.

The expediente, *desiño* and map, indicate that there is a *roblar* in the eastern portion of the land granted, and whether a *roblar* or any part of one, may be included in a survey, approximating nearly to the shape of the *desiño*, and having the boundaries called for in the grant and decree, is the matter first to be determined. If this can be done, it ought to be done. The present survey should be then rejected, in favor of such a survey.

But if all the boundaries, the shape, and a *roblar*, cannot be had in consistent conjunction, the question arises whether the claimants may have such a location of the quantity confirmed to them, as will include the "*roblar*," in the direction of Santa Clara, or must they take by the Forbes survey, or a near approximation to it? On this branch of the case, I think the decree of the district court will enable the Surveyor-General to reach a just conclusion. That decree, under date of 20th February, 1857, recites that "the land was occupied and cultivated by the original grantees, and

has continued in their possession, and that of parties under them, until the present day. Its boundaries are well known, and described with considerable precision in the grant, and accompanying map."

Now, if a location harmonizing the *desiño*, the boundaries, and the natural objects named in the muniments of title, cannot be had, I should say that the claimants might take their land partly, according to their continuous possession; and if they did occupy and cultivate, and maintain possession under their grant of the particular parcels of lands which the contestants claim should be left out, in making a final survey, the claimants may be allowed to take in the land so possessed and claimed; but if the claimants, and those under them, between 1851, and February 20, 1857, regarded, or caused the public to regard the Forbes survey as a correct delineation of their land, and as fixing the *locus* of the quantity granted them, and settlers went upon the lands lying between the Forbes survey and Santa Clara Mission, and made valuable improvements, believing that they had settled on public lands, I could not recognize the right of the claimants, at this late period, to choose their confirmed quantity, in such a manner, as to embrace those improvements within their lines, whilst by so doing they were throwing off other land that was within the limits shown by their original *desiño*, and were departing from the *desiño*, as to shape, and from the grant, as to the external boundaries mentioned for their rancho.

The papers which accompanied your report are now returned.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 660.

The Tularcitos Rancho.

Where the boundaries of the land are particularly set forth in the decree of confirmation, and can be truly ascertained, the Surveyor-General should follow them. The proposition that the true boundary of the grant in one direction, is another ridge of hills or mountains than the ridge which satisfies the calls of the decree, cannot be considered in making the final survey.

DEPARTMENT OF THE INTERIOR,
Washington, July 30, 1859.

Sir:—With your report of the 23d ultimo, the appeal of the attorney for the claimants of "Los Tularcitos" rancho, California, (finally confirmed to Antonio Hignera and others,) from your decision concurring in the views expressed by the Surveyor-General in his report of the 30th June, 1858, has been submitted to me.

The confirmees complain that the Surveyor-General proposes to locate the eastern boundary of their land too far west, thereby excluding from their rancho, the plain and valley of the Calaveras river or creek. They claim that a certain "lone tree," which he has made a corner of their land, is only an object in their *northern* line which ought to be extended eastward through and beyond that object till it intersects the highest ridge of the Sierra Madre. That the ridge on which the tree stands, is not properly a sierra, and their decree and other evidences of title will not warrant the adoption of that ridge as their eastern limit, when the Sierra Madre is so near and in the same direction; and that the *desiño* and their occupation, entitle them to the Calaveras valley.

It may be admitted that their arguments would have great force, if

addressed to a court or board of commissioners, when preparing the decree of confirmation. But in this case, the Surveyor-General is called on to execute a decree which has been made. That decree confirms the claim by boundaries, and then refers to the grant and map for further description. The Surveyor-General construes the decree and map and grant together, and harmonizes them. He is not at liberty to place a construction on the original grant and map, which is hostile to that which the Board of Land Commissioners adopted and embodied in their decree. If the terms of the decree of confirmation restricted their claim to less land than has been granted, they should have sought a reversal of the decree. We are not at liberty so to construe it as to render its plainest directions inoperative, and its plainest words unmeaning. The decree has confirmed the claim by boundaries, although the grant was not by boundaries; and has declared that the land, of which confirmation is made, is bounded as follows:—"Beginning at the back side of the principal house on said rancho, standing at the foot of the hill, and running thence northwardly to a lone tree on the top of the sierra, (which tree is known as a landmark;) thence east along the sierra to the line of the land known as the rancho of José Maria Alvisa; thence southerly along the west line of said Alvisa's rancho till it intersects the Arroyo de la Penitencia; thence up said Arroyo to an estuary, (estero,) and from this point to the place of beginning," * * * * "reference to be had for more particular description, to the expediente and map constituting a part of the same, which are on file in this case."

By this language, a lone tree is made a corner of the land. We are to begin at the house, and go to the tree. There we change the course by something near a right angle, and proceed along a ridge or "sierra," to the land of Alvisa. Now should the surveyor, having reached the tree from the house, proceed on in the same direction beyond the tree, as claimed by the attorneys for the confirmees, instead of an angle of about ninety degrees at the tree, he would pass that object on a straight line; instead of following a sierra, after passing the tree, he would descend into a plain and valley, and cross a small river; and however far he might go in that direction, he would not reach the lands of Alvisa. The boundaries named in the decree would be departed from entirely, and the survey could not be closed according to them.

That the "lone tree" named in the decree, and the evidence on which the decree is based, has been found, seems to be conceded. That tree is on the top of a ridge, that ridge runs in a course nearly perpendicular to the course from the house to the tree, and by following it you reach the lands of Alvisa. The ridge on which that tree stands, therefore, is determined to be the sierra, which is made, by the decree, the eastern boundary of the land,—the courses as named in the decree, being all revolved to correspond with the true points of the compass, as now ascertained. By closing the survey with that ridge as the east line of the rancho, the proportions of the plat, and shape of the confirmed tract, are found to correspond with the map which is attached to the expediente.

It may be appropriately said, also, that the *desiño*, with the exception of the points of the compass, appears to be unusually accurate. The "Penitencia" creek, the estero, the Arroyo de Monte Telos coches, are correctly laid down and marked. The Calero creek is also indicated but not named. The "lone tree" in the *chemisal*, is found in the proper corner of the *desiño*, the houses, the lake, the vineyard, the high grounds within the survey, are not inaptly delineated in corresponding portions of the *desiño*. The claimants, however, demand the inclusion of the Calaveras plain and valley. If this is represented on the *desiño*, the map which, by all other

marks, is evidenced to be very accurate as a delineation of the land, would become immediately most imperfect, untrue and deceptive. Small objects would show prominently, and assume positions and magnitudes relatively incongruous, whilst a large space of country in the east of the rancho would be scarcely represented at all. Looking at the proportions of the *desiño*, and recalling the actual extent and width of the Calaveras plain and valley, and the size of the stream flowing through that valley, I could not regard that valley as delineated on the map. The grant is very general, and rather indefinite in its description of the land, and we, of necessity, therefore, rely on the boundaries given in the decree, and the *desiño*. These are well satisfied by the lines which the Surveyor-General has marked. He has examined the locality in person, and is fully satisfied, that he reports the true boundaries of the rancho. I do not see how any other lines could close so well with all the calls of the decree of confirmation if run so as to cross the Calaveras valley.

I therefore return the papers in the case, for the course of action which your office has proposed.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 661.

1. *The decree in the case of the "Pinole" claimants, is a confirmation of land by quantity within boundaries, and not a confirmation by boundaries.*
2. *Where the exterior boundaries for location are described as "thence to the Cañada del Hambre, and from thence to the straits," the valley land of the Cañada, is not taken within the limits. The limit of location in that direction is the line formed by the hills or bluffs with the land of the valley.*
3. *Where land has been granted by the Mexican authorities, and the grant has been confirmed by the United States Courts, the Department will not be justified in giving such a construction and location to two older and preferred claims, as to shut out the location of such grant, when other constructions and locations of the preferred claims are equally just and proper.*
4. *"Pinole," "Del Hambre," "Las Juntas."*

DEPARTMENT OF THE INTERIOR,
Washington, August 10, 1859.

Sir:—I have considered your report of the 19th August, 1858, submitting a communication of the Surveyor-General of California, of the 19th February preceding, in the matter of the location of the confirmed California land claims, known as Pinole, Las Juntas, and Del Hambre. The Surveyor-General has submitted these cases for advice, accompanied by a diagram of the locations he proposes. On his instructions to his deputy, on his views as communicated in the letter of 19th February, and on the opinions expressed in your report, several questions arise which are of essential importance to the claimants, and persons holding their titles, and also to the United States.

Without stating the respective claims set up by the numerous conflicting interests involved, I will proceed to state my conclusions, so far as, in the present state of the proceedings of the Surveyor-General, seems to be proper.

Firstly. I am of the opinion that the effect of the decree of confirmation, in the Pinole case, is to restrict the claimants to four square leagues for quantity, and this quantity is to be set off within the boundaries mentioned in the grant and decree according to the general regulations respecting the location of quantity within boundaries containing an area greater than the quantity confirmed.

The decree of the court, in the case of the Pinole claim, is rather brief and informal. It is therein "adjudged by the board, that the claim herein is valid, and decree a confirmation of the grant to the several claimants in the amended petition mentioned, agreeably to their respective rights of the ranche, called Pinole, situate in the county of Contra Costa, and described as follows: commencing at the mouth of the Cañada del Pinole, easterly with the same, until it adjoins the Correl de Galindo, from thence to the Cañada del Hambre, and from thence to the Straits of Karquinez, the Bola de la Cañada, of said Pinole, emptying into the Bay of San Francisco, reference for further description being had to the map attached to the expediente, and the deposition of W. A. Richardson, on file in this case."

This decree, it is claimed, gives a right to all the land within the boundaries mentioned, without restriction of quantity. But it is to be observed that the Board of Commissioners in this case, caused their opinion, as pronounced by S. B. Farwell, one of their number, to be filed on the same day and to be recorded in the same record book, in conjunction with their decree. By reference to that opinion, it is clear that they regarded the "claim," which by their decree, they found to be valid, to be a claim for four square leagues. It is equally clear, that the "grant," of which they decreed confirmation, they regarded as a grant for four leagues.

Another obvious remark is, that the general effect of this decree, is to confirm the grant set out in the expediente. On reference to the grant, we find that it was conditional; as follows, "the place known by the name of Pinole, its limits being," &c., &c., (much as above,) "subject to the following conditions." "Third, the land of which donation is made, is four square leagues, a little more or less." * * "The judge who may give the possession, will have it measured in accordance with law, the surplus resulting, to remain to the nation," &c. It is well settled that such conditions are controlling conditions of Mexican grants of this kind, and we therefore say, that the *grant* was for *four* square leagues. We regard the Board of Land Commissioners, in this decree, as having done what it was their special province to do; as having decided upon the validity of the claim, and awarded a confirmation of the grant. The claim was never made, it would appear, for a quantity greater than four square leagues. The original grantee, though an old soldier and old settler, in his petition for four leagues, to the Mexican officials, apologised for asking for that much. Before the Board of Commissioners, the claim was apparently treated on all hands as only a four league grant. The witness, Richardson, whose deposition is referred to by the decree, swears that there is four leagues, as near as possible, in the boundaries he describes. In this he was mistaken, but in this he shows that the claimants were then setting forth a four league grant, before the Board. I could not give such a construction to their decree, as to sanction the claimants in basing on it a new claim to a larger quantity, so long as the other construction of the decree was tenable, which limits the quantity to four leagues, as asked for, as granted, and as claimed before the Board of Commissioners.

The Las Juntas claim, has been confirmed for three square leagues, to be located, pursuant to the decree of confirmation. Its location is indicated in the decree as follows: "The lands of which confirmation are

hereby made, are known by the name of Las Juntas, and are the same upon which the widow of the late William Welch, now resides, and are bounded as follows : to wit : on the east by the Arroyo de los Neuces, and lands of Dona Juana Sanchez, on the south by said Arroyo, and lands of Lorenzo Pacheco, on the west by said Arroyo, and lands of Joaquin Moroja, and on the north by the Arroyo del Hambre, and lands of Ygnacio Martinez, containing in all three square leagues; reference for further description to be had to the map which is made a part of document marked 'A,' and filed in this case."

In the grant, the Arroyo de los Neuces, "and that of El Hambre," are named as boundaries, without prejudice to adjacent claimants, one of whom is Ygnacio Martinez, claimant of Pinole.

The District Court of the United States, for the Northern District, has also confirmed the claim of Theodora Soto, reciting in its decree that "the land of which confirmation is made, is situated in the county of Contra Costa, and is known by the name of Cañada del Hambre y' Las Bolsas, as granted to said claimant, by Governor Juan B. Alvarado, on the 14th December, 1841, and consists of so much of the land known at the date of said grant as the Cañada del Hambre, as shall remain overplus from the ranchos of Pinole and Mr. Welch, not to exceed three square leagues, after the latter shall have been duly located, and surveyed by the proper officers."

Looking back at all these cases together, it is to be remarked that the Pinole and Las Juntas, were the earliest settled and petitioned for. The Pinole, called for the "Cañada del Hambre," as one of its external limits, and Las Juntas, for the "Arroyo del Hambre." Yet the Del Hambre was first granted, subject to, or "of that which shall be left over from," the ranchos of Pinole and Mr. Welch.

The Mexican authorities in 1841, did find land between Pinole and the Welch grant, as overplus from their grants, or claims then incomplete, and granted of such overplus, a quantity lying between them, known as "Cañada Del Hambre," and not to exceed three square leagues. The proper tribunals of the United States have confirmed that grant; and although Pinole may go for its location to the "Cañada Del Hambre," and Las Juntas may, in part, have the "Arroyo Del Hambre" for a boundary, we are not at liberty to say that the two ranchos last named are coterminous to such an extent as to shut out a location of the Del Hambre.

And I think this was the better conclusion from all the facts in the cases. The Pinole, which by the grant and the *desiño*, filed before the board of Commissioners, would appear to have for its quantity of four leagues, two admitted and old established sides or bases, viz., the Pinole Cañada to the Ranch house or beyond and the Bay of Sonoma, might extend to the valley of the Del Hambre for its quantity, but had no right to go into that valley; its limits in that direction being the line found by the intersection of the hills with the level lands of the valley.

The Las Juntas, according to its grant and *desiño*, was to have three leagues between the head waters of the Neuces, with the hills above them on the north, for a western limit, the Neuces as a limit on the south and east, and on the north the Arroyo Del Hambre, and lands of Pinole. Nature reveals a tract of land on the Straits of Corquinez, which neither of these *desiños* delineate; and it is this which has been confirmed to Soto, not to exceed in quantity three square leagues.

The Surveyor-General will therefore first give to the Pinole claimants a location for four square leagues, within the region indicated by their *desiño*, excluding the Del Hambre valley.

Secondly. As to the Las Juntas. Within the highlands, the Ralies creek, and the Neuces as far as the estuary or outlet into the marshes, the Surveyor-General will have a region with three outline sides, within which he can properly locate the three leagues confirmed to the claimants in that case.

The two claims should be located independently of each other, and irrespective of the Del Hambre claim, excepting the recognition of the fact that it lies between these claims and the waters of the strait and marsh. After the proper quantities are surveyed according to the general instructions, within the exterior limits noted by the grants and maps in the two cases, the Del Hambre will be located so as to include Tedora Soto's ancient possessions, the Bolsas, and the Cañada Del Hambre, if nowhere trenched upon by the location of Las Juntas, and not to exceed the limits of three square leagues. Where practicable, the lines of the other ranchos should be made boundaries of this.

The papers in the matter are now returned, and you will instruct the the Surveyor-General to conform, in his final locations, to the principles herein determined. Any suggestions as to details which may have been thrown out in my remarks, will not be regarded as controlling general instructions, or as absolutely overruling the exercise of such sound discretion by the Surveyor-General, as facts now unknown or undeveloped may hereafter require of him.

Very respectfully, your obedient servant,

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 662.

Where separate portions of a single Mexican Grant were confirmed by independent decrees to separate claimants, one having had a mesne conveyance for specific land within the grant, the two decrees must be executed, as to survey, with reference to each other, so that the two surveys will form the compact body of land which was granted.

A construction of either of the decrees, will be rejected by the Surveyor-General, the result of the adoption of which, would be to give a greater aggregate of land to all the claimants than the entire quantity of the original grant.

DEPARTMENT OF THE INTERIOR,
Washington, September 1, 1859.

Sir :—On consideration of your report of the 18th May last, in the matter of the application of H. P. Hepburn, Esq., for the issuance of a patent upon the returned survey of the Rodriguez portion of the Buelna grant, I am of the opinion that the issuance of the patent as the case then stood, and it is believed now stands, would not be proper. This survey was made so as to have on the east a line of boundary, which became the west line of the survey of a confirmation of another, and the remaining portion, of the Buelna grant. The survey of the Castro part of the grant was rejected, according to the views of the Commissioner of the General Land Office, expressed in his reports of the 18th February and 17th April, 1858, which were sustained by my replies of the 10th March and 30th April, 1858. The decree in Castro's case, we regarded as confirming only one square league of land, being a portion of an original four-league grant, of which the remaining three leagues were confirmed to the Madam Rodrigues.

The grant is regarded as a compact body of land, having itself a general figure indicated by the *desiño*, and the two confirmed claims are components of the body. The aggregate of the two confirmations cannot be greater than the entire original grant; nor are the parts found severed from each other, but must be continuous.

The Rodriguez claim must therefore be suspended till we can proceed with Castro's claim; or if the claimants prefer it, and abandon the surveys that have been made, it will be proper to order a re-survey of both claims, conformably to the decisions in the two cases, and to the laws and general regulations pertaining to the location of private land claims in California.

Shortly after your report was submitted, the attorney, Mr. Hepburn, was verbally advised of my opinion in these cases as now expressed, and it was deemed probable that he would have some further communication to make, but I have received none, and as some three months have elapsed since, I now return the papers in the matter to your office.

Very respectfully your obedient servant,

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

TITLE XIII.

Land Patents.

RESCISSION OF LAND PATENTS.

No. 663.

The proper mode of proceeding to vacate an erroneous Land Patent is by bill in equity; the regularity of proceeding by scire facias in this country is doubted. In England, letters patent are of record on the law side of the Chancery Court; wherefore there is a propriety there for a writ of scire facias to vacate a patent, that does not exist in the United States. (Case of Jackson v. Lawton, 10 Johnson, 23, contra.)

A bill or information will lie in Chancery to set aside a patent that has issued improperly; and being the surest mode, it is recommended to the Land Office. (Seward's Lessee v. Hicks, 1 Har. & M'Henry, 24; Lord Proprietor v. Jennings, ibid., 92; Bagnell v. Broderick, 13 Pet. 436.)

A second patent for the same land should not issue until the first patent shall have been judicially avoided.

OFFICE OF THE ATTORNEY-GENERAL,
November 26, 1842.

Sir:—I have had the honor to receive your letter of the 22d inst., enclosing a communication from the Commissioner of the General Land Office,

Though a public grant raises the presumption that every pre-requisite has been complied with, the jury could not safely be instructed that no fraud in a public officer could invalidate it.—*Patterson v. Jenks*, 2 Peters, 216; 8 Condensed Reports, 92.

A patent in the name of a deceased person conveys no title; but by the Act of 2d March, 1807, (2 Stats. at Large, 424,) land so patented in the Virginia Military Land District, was withdrawn from location; and by the Act of May 21, 1836, the defect was cured, and the title vested in the heirs of the deceased patentee.—*Galloway v. Finley*, 12 Peters, 26; 12 Cond. Reps. 724.

A patent is a complete appropriation of the land it describes; and at law, no defect in the preliminary steps can be tried.—*Stringer's Lessee v. Young*, 3 Peters, 320; *Boardman v. Reed's Lessees*, 6 Peters, 328; 10 Cond. Reps. 135.

The entire description in a patent must be reasonably construed, to ascertain the identity of the land. If a call is erroneous and repugnant, and enough remains after rejecting it, to identify the land, the patent is not void.—*Id.*

A patent issued to one whose claim under a Spanish title in Missouri had been confirmed by a Board of Commissioners, pursuant to an act of Congress, is conclusive evidence that the grantee was the lawful owner of the title thus confirmed, and that he had the best Spanish title to that tract of land.—*Landes v. Brant*, 10 Howard, 348; 18 Cond. Reps. 418.

Whatever may be the equities in third persons, the patentee has the legal title; and a State law cannot confer on the equitable owner the right to maintain an action

requesting my opinion on the following questions, arising in the case of the conflicting claims of Robert Johnson and Giles Carter: "1. Whether the Land Office would be justified in issuing a patent on the pre-emption entry of Robert Johnson, reciting therein the issue and delivery, by mistake, of the patent to Giles Carter, (which includes a portion of the land embraced by Johnson's pre-emption entry,) leaving the question of title to be settled by them in their local courts upon the two patents so issued; or, 2. Whether it will be necessary first, by *scire facias*, or bill in Chancery, to procure the vacation of the erroneous patent to Carter prior to issuing one to Johnson.

Notwithstanding the opinions of Mr. Wirt, (Opinions of Attorneys-General, 334 and 575,) I feel some difficulty about the course recommended by him to be pursued by the Land Office in a case of patents issued under such a mistake as that in question. If the patent has not been delivered, I am not disposed to deny that it may be withheld on the discovery of

of ejectment against the patentee.—*Bagnell v. Broderick*, 13 Peters, 436; 13 Cond. Reps. 325.

An act of Congress confirming a title, makes a legal title without a patent.—*Grignon's Lessee v. Astor*, 2 Howard, 319; 15 Cond. Reps. 125.

An act of Congress confirming titles, excepted cases where the land had been previously located by any other person than the confirmer, under any law of the United States, or had been surveyed and sold by the United States. Held, that a location made on land reserved from sale by an act of Congress, or a patent obtained for land so reserved, was not within the exception, and the title of the confirmer was made perfect by the act of confirmation, and without any patent, as against the prior patent, which was simply void; and this valid legal title enured at once to the benefit of an assignee of the confirmer.—*Stoddard v. Chambers*, 2 Howard, 284; 15 Cond. Reps. 119.

Where there are two confirmations by Congress, of the same land in Missouri, the elder confirmation gives the better title; and the jury are not at liberty, in an action of ejectment, to find that the survey and patent did not correspond with the confirmation.—*Willot et al. v. Sandford*, 19 Howard, 79.

Where the Receiver gave a receipt in the name of John Bell, and the Register made two certificates of purchase, one in the name of John Bell and the other in the name of James Bell, the circumstances of the case show that the latter was an error which was properly corrected by the Commissioner of the General Land Office, in the exercise of his supervisory authority; and he had a right to do this, although a patent had been issued to James Bell, which had been reclaimed from the Register's office, and returned to the General Land Office to be cancelled.—*Bell v. Hearne et al.*, 19 Howard, 225.

In an action at law, the patent from the United States for part of the public lands, is conclusive. If those who claim adversely to the patent can show that it was erroneously issued, relief must be sought on the equity side of the Circuit Court.—*Bagnell v. Broderick*, 13 Peters, 436; 13 Cond. Reps. 235.

Mere possession of public land will confer no title as against a grantee under the United States.—*Burgess v. Gray*, 16 Howard, 48; 21 Cond. Reps. 25.

An equitable Spanish title not confirmed by the United States, cannot prevail against a legal title acquired from the United States.—*United States v. King*, 3 Howard, 773; 15 Cond. Reps. 640.

So long as the government held the title to the land demanded, there could be no adverse possession to cause the Statute of Limitations to run.—*Lindsey v. Miller*, 6 Peters, 666; 10 Cond. Reps. 304.

If the defendant have the prior patent for the land, the plaintiff can prevail in equity only by showing prior valid entries.—*Hunt v. Wickliffe*, 2 Peters, 201; 8 Cond. Reps. 85.

A patent makes a valid title as against a subsequent entry.—*Hoofnagle v. Anderson*, 7 Wheaton, 212; 5 Cond. Reps. 248.

fraud or error. But where the act of issuing it is complete, and the patentee will not give it up to be cancelled, it is, in my opinion, a good title at law until judicially avoided. Then the question is, how is that to be done? Mr. Wirt lays it down that it may be effected either by a *scire facias* or by bill in equity. This is the uniform language of American lawyers, and on a former occasion I signified my assent to it. (See the well considered case of *Jackson v. Lawton*, 10 Johns. 23.) On a more mature consideration of the subject, I am led to entertain some doubts, notwithstanding these weighty dicta, whether *scire facias*, even in equity, is precisely regular in this country. The reason why it lies in chancery in England is, that letters patent are of record on the law side of that court. In a leading case on this point, (*The King v. Butler*, 3 Lev. 223,) this is expressly ruled; and it is added, that where the matter is forfeiture of a patent, or other thing, in another court, there must be an office found in that

A patent from the United States does not affect a pre-existing title in a third person.—*New Orleans v. De Armas*, 9 Peters, 223; 11 Cond. Reps. 338.

Where a patent is founded on an assignment of a certificate of a military right, a court of equity may inquire into an alleged fraud in that assignment, and if found fraudulent, decree the holder of the legal title to be a trustee for the equitable owner.—*Brush v. Ware*, 15 Peters, 93; 14 Cond. Reps. 34.

The act of a Register in issuing a warrant under such a certificate, is ministerial, not judicial.—*Ib.*

The plaintiff in ejectment must in all cases prove a legal title to the premises in himself, at the time of the demise laid in the declaration; and evidence of an equitable title will not be sufficient for a recovery.—*Fenn v. Holme*, 21 Howard, 481.

Hence the holder of a New Madrid certificate, upon which no patent had been issued, and whilst it was yet uncertain whether or not the proposed location of it was reserved under older surveys, could not recover in ejectment. The legal title was in the government.—*Ib.*

In Opinion of July 20, 1848, (vol. 5, p. 7,) Attorney General Toucey says, "In the case of *Ross v. Borland*, 1 Peters, 656, the Supreme Court held a junior patent to prevail against an elder one on two grounds. 1st. That the junior patent, which issued upon a certificate of a donation claim prior in date to the other patent, would overreach it by the local law, which was admissible. 2d. That the junior patent issued on the certificate of a board of commissioners, west of Pearl river, whose decisions were final; in other words, the second patent issued upon legal authority, the first did not, and therefore the second must prevail. More recently, in the case of *Brown v. Clements*, 3 Howard, 650, it was directly adjudged by the Supreme Court that the second patent prevailed over the first where the first was not legally issued."

After referring to other cases, Attorney-General Toucey continues: "It is evidently, therefore, the view of the Supreme Court, that a patent issued without authority of law, or against law, is not voidable merely but void, and being therefore a nullity, and as though it did not exist, it leaves the duty unimpaired to convey the title to the rightful owner."

In the concluding clause of Attorney-General Clifford's "Opinion" of April 7, 1847, (vol. 4, p. 558,) addressed to the Secretary of the Treasury, he says: "If, however, he, Mr. (Arnold,) shall be advised by his counsel that it is necessary, you might authorize him to use the name of the United States, as was suggested by this Office in the case of William Russell, on the 26th March, 1842. That, however, is a matter resting in your discretion, which ought not to be exercised except in a clear case."

An elder patent, unless issued without authority of law, is conclusive against a junior patent, and the land would pass by it, the second being inoperative.—*Jackson v. Lawson*, 10 Johns. 24.

Where, upon the application of a settler on public land in Iowa for a patent for his entered location, it was made to appear, that after having executed a deed of a portion of the land to another person, he made the affidavit required by law, that no person, other than himself, had any interest therein, and that he had made no contract, &c.; and that such grantee had obtained a patent for his land under the Act

other court before the *scire facias*. (See also the argument for the crown, in *The King v. Vernon*, 3 Lev. 281, and the opinion of the judges, 387.)

I know no case in which this rule has been expressly denied to be law in this country, though there are, as I have said, many dicta that appear inferentially inconsistent with it; though, even in the case in 10 Johns., the opinion of the court seems to be that the *scire facias* must be brought in chancery, evidently founding itself upon the English authorities, yet overlooking the distinction between the two sides of the chancellor's court. (1 Mad. Ch. P. 4.) It is certain, however, that a bill or information will lie in chancery to set aside a patent that has issued improperly; and this, as being the surest course, I recommend to the Land Office. (*Seward's Lessee v. Hicks*, 1 Har. & M'Henry, 24; *Lord Proprietor v. Jennings*, ib., 92; *Bagmell v. Broderick*, 13 Pet. 436; and the case above cited.)

A bill may be filed in the name of the United States, or even of the

of 4th September, 1841, and claimed to hold it, notwithstanding the settler's deed to him had been decreed by a court of chancery, having jurisdiction, to have been obtained by duress, and for such reason to be void; held, that a second patent for the same land ought not to be issued whilst the first remains outstanding.—(Opinion of Attorney-General, April 7, 1847, vol. 4, p. 558.)

It is not the duty of the government to institute proceedings to vacate the first patent, as it is in nowise responsible for the act which embarrassed the settler's pre-emption, and caused the existing difficulty.—*Ib.*

The applicant should seek relief in the Court of Chancery, which has full jurisdiction of the case, and ample power to administer the remedy to which he shall be entitled.—*Ib.*

He may, however, be permitted to use the name of the United States in his proceedings, if the Secretary of the Treasury shall deem it discreet to authorize it.—*Ib.*

A patent issued by mistake may be corrected before delivery. If delivered, and the patentee refuse to surrender it for cancellation, the President may issue a new one, reciting the error committed in the former as the cause.—(Opinion, November 13, 1826, vol. 2, p. 41.)

Where a patent was issued by mistake, for a whole instead of a quarter-section of land, and the patentee sold the same; held, that the vendee be immediately notified of the mistake, and that both be made parties to a suit for the cancelling of the patent.—(Opinion, June 7, 1827, vol. 2, p. 53.)

A patent may properly issue to pre-emptors, notwithstanding others, to ordinary purchasers, may have been issued for the same land, and remain outstanding.—(Opinion, July 29, 1848, vol. 5, p. 7.)

As against pre-emptors who have complied with the conditions of the law, the executive department has no right to convey to others; and whenever it does so the grants are void.—*Ib.*

Patents erroneously issued, or rendered invalid by an act of Congress confirming adverse titles, must be cancelled, or judicially avoided, before another can be issued for the same land, even to confirtees.—(Opinion, March 15, 1843, vol. 4, p. 149.)

After one patent has issued for lands, the executive department is *functus officio* in respect to such lands, until its former act is judicially set aside.—*Ib.*

The issuing of new patents, whilst others are outstanding, will lead to infinite mischief and confusion, by the blending of executive and judicial functions in a manner unknown to the laws and the Constitution.—*Ib.*

If two patents be issued by the United States for the same land, and the first in date be obtained fraudulently or against law, it does not carry the legal title. A patent issued for lands reserved from sale is void.—*Wright v. Rutgers*, 14 Missouri Reports, 585; *Stodard v. Chambers*, 2 Howard, United States, 284.

The holder of an unpatented location cannot dispossess one holding under a patent from the United States by any common law proceeding, but he may institute a pro-

party concerned; and the suit be conducted either by the district attorney, or the solicitor of the pre-emptioner, to set aside the patent, or hold the patentee as a trustee, on the ground that, under the pre-emption acts, an equitable title had previously vested in the latter pre-emptioner; and that, according to the course of the Land Office, the issuing a patent to another was an unauthorized act, procured to be done by surprise. Such a suit, as between individuals, supposes the equity to be all on the side of the complainants. Should, therefore, the legal title conveyed by the patent be supported by an equity, (*e. g.*, purchase without notice for valuable consideration,) the suit might possibly fail. This must be looked into by those who shall be called on to institute the suit. The case of *Seward's Lessee v. Hicks*, however, is authority for proceeding even against a vendee in

ceeding in chancery, for the purpose of rescinding a patent improperly granted.—(Opinion, August 31, 1819, vol. 1, p. 300.)

The general standard of remuneration, where the title fails, is the purchase-money and interest; the improvements to be paid for by the successful party.—*Ib.*

Land patents issued by mistake, for lands to which other persons have pre-emption rights, may be returned and cancelled, or repealed by *scire facias* or bill in chancery, at the instance of the United States, or of the pre-emptioners in the name of the United States.—(Opinion, January 27, 1821, vol. 1, p. 458.)

The Recorder of the General Land Office only has power to attest and seal patents for public lands, the former law in this respect having been repealed by the Act of July 4, 1836.—(Opinion, July 25, 1836, vol. 3, p. 140.)

All patents emanating from the General Land Office, whether of lands sold, or of lands in respect to which private claims are recognized by Acts of Congress, must be certified or countersigned by the Recorder.—(Opinion, December 23, 1836, vol. 3, p. 167.)

Ordinary sales of lands afterwards confirmed to a Spanish claimant, must yield to the confirmed claim.—(Opinion, August 8, 1838, vol. 3, p. 354.)

It is a sufficient compliance with the provisions of the Act of July 4, 1836, for the engrossing clerks to write the name of the President to patents, and for the Secretary thereafter to attest them by his signature.—(Opinion, February 27, 1841, vol. 3, p. 623.)

All the duties respecting the execution of patents are ministerial, and may be performed either by the clerks or by the Secretary.—*Ib.*

The counter-signature of the Recorder of land patents, and seal of the office thereto attached, constitute a sufficient authentication of a patent for land.—(Opinion, April 10, 1841, vol. 3, p. 630.)

On a certificate to A. and company, assigned by A. alone, a patent may issue to A.'s assignees; and his partners must seek relief, if they are entitled to any, in the courts.—(Opinion, October 20, 1842, vol. 4, p. 96.)

It is not competent or proper for the Commissioner of the General Land Office to make alterations in the dates of patents for lands, after the delivery thereof to the grantees.—(Opinion, June 18, 1844, vol. 4, p. 329.)

Whether patents, irregularly issued, shall have effect from their date or time of delivery may be determined by parol testimony.—*Ib.*

Patents granted by the United States for lands confirmed by the commissioners to adjudicate private land claims, do not confer title save as against the United States.—(Opinion, February 14, 1856, vol. 7, p. 636.)

The legal effect of confirmation dates back to the time of the cession of California to the United States, and decides that the land confirmed was not public domain at that time.—*Ib.*

The rights or claims of third parties remain to be determined by the proper courts.—*Ib.*

such a case; and, on general principles, a distinction is to be taken between a grant of the sovereign and a sale made by an individual. The rule laid down by the Supreme Court (*Taylor v. Browne*, 5 Cr. 234.) is, that the locator of a warrant undertakes himself to find waste and unappropriated land; and his patent issues upon his own information to the Government, and at his own risk. He cannot be considered as a purchaser for valuable consideration without notice. This may be generalized. (See the case of *The King v. Vernon*, as to a grant obtained by surprise from the king.) On these precedents and the general rules relating to grants by the sovereign, I think it the better opinion that such a patent ought to be set aside, unless it happened to be supported by some very strong extraneous equity. Mr. Wirt's opinion seems clear in the affirmative; and

Such patents do not carry, nor do they reserve any right as to mines, all which remains to be determined by the laws of California.—(Opinion, February 14, 1856, vol. 7, p. 636.)

Mines of the precious metals belong to the eminent domain of the political sovereignty, as well by the laws of Spain as by the common law of England, and the public law of the United States.—*Ib.*

Where the local law will authorize it, a patent may issue to the purchaser of land at a sheriff's sale.—(Opinion, August 15, 1816, vol. 1, p. 191.)

Land patents may and ought to be withheld where the confirmations have been obtained by fraud. If actually issued, the courts will cancel them.—(Opinion, Nov. 25, 1841, vol. 1, p. 699.)

The issuing of a patent is not so purely a ministerial act as to follow a patent certificate as a matter of course.—(Opinion, October 10, 1825, vol. 2, p. 15.)

Patents should not issue for lands inadvertently sold.—(Opinion, October 22, 1828, vol. 2, p. 186.)

The Commissioner is bound to issue the patent to the original beneficiary, his heirs or assigns, and must, therefore, have satisfactory evidence of assignment before he issues to assigns.—(Opinion, October 13, 1839, vol. 2, p. 276.)

The execution of a patent for land to a soldier in the War of 1812, by the Commissioner of the General Land Office, passes the title, although the same had not been delivered to the patentee.—(Opinion, September 7, 1841, vol. 3, p. 653.)

It is a matter of discretion with the Department as to whom the patent should be delivered.—*Ib.*

A patent cannot issue to one of two purchasers of a quarter-section of land, or for any unspecified portion of the same. Where such conditions exist as will permit a partition of the land held in common, a patent may be issued to the purchaser entitled after the division.—(Opinion, April 16, 1844, vol. 4, p. 319.)

Pre-emptors for back lands in Louisiana, under the Act of 3d March, 1811, continued by that of 11th May, 1820, which reserved such lands from sale for three years, who made the entry, gave the notice and paid for the same as therein provided, are entitled to patents, although others may have obtained patents for the same land pursuant to private entry.—(Opinion, July 29, 1848, vol. 5, p. 7.)

No patent can be issued by the Commissioner of Public Lands, to any private land claimant in the State of California, until after final decree in the case.—(Opinion, September 18, 1855, vol. 7, p. 491.)

Where lands are confirmed by the Commissioner, described as being "comprehended between" certain limits, but confirmed "to the extent and quantity of four square leagues and for no more, provided, that so much be contained within the boundaries called for by the grant;" held, that the patent cannot issue for more than four square leagues of land, whatever may be the quantity within the bounds designated.—(Opinion, April 24, 1856, vol. 7, p. 681.)

A patent issued under a mistake, in consequence of a Virginia military land warrant being located on lands which had been previously and regularly located by others, is null and void.—(Opinion, June 10, 1857, vol. 1, p. 159.)

in the case of *Bagnell v. Broderick*, the language of the court is very strong and comprehensive.

I have the honor to be, sir, your obedient servant,
H. S. LEGARE.

Hon. W. Forward, Secretary of the Treasury.

No. 664.

A patent will not be issued to a private purchaser for land to which a valid prior Pre-emption right existed.

DEPARTMENT OF THE INTERIOR,
October 7, 1858.

In the case of *William C. Bissell v. Isaiah Ferris*, from the Springfield, Illinois, Land Office, which was submitted to this Department by your let-

Where the Register at Kaksaskia had issued two certificates for the same land, to two different persons, held that the first had preference.—(Opinion, August 8, 1816, vol. 1, p. 191.)

Patents are unnecessary to complete title to an unsold portion of the confirmed claim. A grant may be as effectually made by law, as by a patent issued in pursuance of law.—(Opinion, August 6, 1838, vol. 3, p. 350.)

An Act of Congress confirming land titles of two or more individuals, or granting land, must be taken altogether, and if there be not land enough to answer all the grants, and there be a conflict of claims, it must be reconciled by reference to the report of the commissioners on which the Act was founded; and if two parts of the same Act cannot be reconciled, the latter provisions must prevail.—(Opinion, May 28, 1842, vol. 4, p. 40.)

Intruders on public lands without title, subsequent to Act of March 3, 1807, may be removed under the provisions of the Act of that date, without three months' previous notice. If the marshal fail to effect such removal, upon trial, the president may employ military force.—(Opinion, April 4, 1815, vol. 1, p. 180.)

Intruding settlers on the public lands, may be removed by military force, under Act of March 3, 1807. The United States have, also, all the common law and chancery remedies of individuals, under similar circumstances, for protection and redress.—(Opinion, May 27, 1824, vol. 1, p. 471.)

The President may direct the marshal to remove intruders from lands, the title to which has not passed out of the United States.—(Opinion, June 25, 1821, vol. 1, p. 475.)

A patent cannot issue to one of the two purchasers of a quarter section of land, or for any unspecified portion of the same. Where such conditions exist, as will permit a partition of the land held in common, a patent may be issued to the purchaser entitled, after the division.—(Opinion, April 16, 1844, vol. 4, p. 319.)

Although a patent may be void because it was not issued by authority of law, or by an officer duly authorized, yet such patent cannot be impeached by one resting on a naked possession.—*Sarpy v. Papin*, 7 Missouri Reports, 503.

Where a patent is issued by an authorized officer, the law presumes that all the pre-requisites necessary to its issue were complied with, and irregularity in the conduct of the officer can be inquired into only, upon direct proceedings on the part of the Government.—*Allison v. Hunter*, 9 Missouri Reports, 741; *Barry v. Gamble*, 8 Missouri Reports, 88.

The fee of lands sold by the United States, remains in the Government, until transferred by patent, which is a better legal title than a prior entry.—*Carman v. Johnson*, 20 Missouri Reports, 108.

A patent issued to a fictitious person, is a nullity.—*Thomas v. Wyatt*, 25 Missouri Reports, 24; *Thomas v. Boener*, 25 Missouri Reports, 27.

ter of the 18th ultimo, it is shown that said Ferris acquired a right of pre-emption to the land in controversy, prior to the entry of said land by the party from whom said Bissell purchased. Your decision, approving the action of the Register and Receiver in permitting the entry of said Ferris, is hereby affirmed, and the patent will accordingly be issued to him. I herewith return the papers in the case.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

An exemplification of a patent certified by the Commissioner of the General Land Office, may be received in evidence, without proof of the loss of the original.—*Barton v. Murrain*, 27 Missouri Reports, 235.

In Illinois, a patent cannot be impeached by parol evidence, in an action of ejectment.—*Bruner v. Mantion*, 1 S. 156.

If the officers of the Government give the patent to a party not entitled to it, he is the trustee for the true owner, if the Government give title to a second person, after having granted previously to the first, the court will respect the title of the first grantee.—*Stark v. Mather*, 1 Walker, Miss. Reps. 181.

Where a certificate called for two sections of land, the holder of it will not be limited to twelve hundred and eighty acres; if the sections contain more, he will be entitled to all the land embraced, within their boundaries, as established by survey.—*Fulton v. M'Affee*, 5 Howard, Miss. Reps. 751.

Patents.—General rules relative to their delivery.

The general rule is, that the duplicate receipts in all cases must be surrendered before the delivery of the patent; but where the duplicate is fraudulently withheld from the owner, the following course may be pursued: Let the purchaser, after filing an affidavit of the facts, send a notice to the wrongful holder of the duplicate, demanding its return, and stating that he will make immediate application for the delivery of the patent to him. Then let a notice to this effect be published by the *bona fide* owner once a week, for four weeks, in the newspaper of the district having the largest circulation, of the wrongful detention of his duplicate, and his purpose to apply for the patent in his own name. Upon his filing in the District office a certified copy of such notice and publication, the patent may be delivered, unless good cause should be shown to the District officers why this should not be done; and in that case, they will stay proceedings and call for instructions.—(Commissioner's letter to Register and Receiver, Faribault, August 26, 1857.)

TITLE XIV.

Repayment of Purchase-Money.

No. 665.

*Circular.*GENERAL LAND OFFICE,
August 31, 1830.

Gentlemen :—Numerous applications to correct errors in entries of the public lands having been forwarded to this Office without being properly supported by testimony, it is deemed advisable to collect and present in one view all the legislative enactments, of a general character upon the subject, with such explanatory remarks as are deemed necessary.

The acts authorizing corrections of errors in entries are the following, viz: (See Nos, 11, 14, 17, 19.)

These laws are plain and particular in their requirements, but few points being left to the elucidation of official instructions; and a careful attention to them will be sufficient, in most cases, to ensure correctness in acting under them. It may not, however, be improper to remark—

1. That the Act of 1819, is intended to afford relief to those persons whose errors in entries have been occasioned by the original incorrect marking by the surveyor, or by the subsequent change or obliteration of those marks, or else by any other error originating either with the surveyor or the land officers. The application of the party should be made under oath, stating *particularly* the nature and cause of the error, and should be supported by the best corroborative testimony that can be procured. The case is then to be reported, with the testimony, *and your opinion thereon*, to this Office, for the decision of the Secretary of the Treasury.

2. The supplementary Act of May, 1824, extends the provisions of the Act of 1819, so as to embrace cases where the error was *not* occasioned by any act of the surveyor or land officers; and provides, that in all cases of error in the entry of a tract of not more than one half section, where the

Instances where there is a deficiency in the quantity of land purchased, and where an entry has been made of land to which another had a pre-emption right, are cases falling within the terms of the Act of 12th January, 1825, and call for repayment.—(Opinion of Attorney-General, August 4, 1843, vol. 4, p. 227.)

But in cases of error arising from miscalculations of the amount to be paid, where the money paid has not been returned by the Receiver, the excess should not be paid from the Treasury; but the error should be corrected by the Receiver. Where, however, the excess or over-payment shall have found its way into the Treasury, it cannot be withdrawn, except in strict fulfilment of the requisitions of law, which the “administrative power” cannot control.—*Id.*

It would not do for the Department to refund money which has erroneously found its way into the Treasury, simply on the ground that it is just that it should be repaid, for the reason that it would require the Department to disregard a most wholesome and salutary restraint, upon the due and strict observance of which the most important interests depend.—(Opinion, September 29, 1843, vol. 4, p. 253.)

An assignee of a pre-emptor is not entitled to a return of the purchase-money.—(Commissioner's letter to Register and Receiver, Brownsville, Minnesota, December 10, 1855.)

right of the original purchaser has not been assigned or in any way transferred, and *where six months from the time of entry has not elapsed*, the party making the entry (or legal representatives, not being assignees or transferees) must file an affidavit, showing the nature and particular cause of the error, that every reasonable and proper precaution had been used to avoid the error, and that the land erroneously entered had not been transferred or otherwise encumbered, accompanied by the best corroborative testimony that can be procured, for you will observe, by this Act, that the oath of the party interested is not, of itself, sufficient. This evidence, with your opinions as to the existence of the mistake and the credibility of each person, will be forwarded for the decision of this Office.

3. The Act of 1825, provides for cases in which the sale of the land is invalid, in consequence of the want of title thereto in the United States, from any cause whatsoever. Under this Act it has been decided, that if only *part* of the tract purchased is covered by the interfering claim, it is optional with the purchaser to relinquish the *whole* tract, or only the particular part interfered with. You will observe, that, under this Act, the money is to be refunded by the Secretary of the Treasury, and not by the Receiver of public moneys. All applications to obtain the benefits of this Act must be supported by your joint certificate, or that of the Surveyor-General, stating the nature of the particular interfering claim, or other circumstance rendering the sale invalid, and be accompanied by the patent, if any has been issued for the invalid sale, with a relinquishment of title, in the following form :

“Whereas the Act of Congress, passed on the 12th day of January, 1825, entitled ‘An act authorizing repayment for land erroneously sold by the United States,’ provides, that whenever the sale of a tract of land by the United States is void for want of title thereto in the United States, or from any other cause whatsoever, the money paid on the same shall be refunded by the Secretary of the Treasury. And whereas [a part, or the whole, as the case may be,] of the within described ——— section of land, is [included in the survey of the private claim of ———, or, as the case may be.] Now know ye, that for and in consideration of the sum of ———, to me in hand paid, by the Secretary of the Treasury, I, the within named ———, hereby assign, transfer, relinquish, and surrender to the United States, all my right, title, interest, and claim of, in, and to, the land described in the within patent. Given under my hand and seal this ——— day of ———, 183—.

Signed, sealed, and delivered, in presence of ———.

4. By the Act of 24th May, 1828, the provisions of the Act of 1819, are so extended as to embrace patented cases. The application for relief, in these cases, will have to be reported in the manner required in those not patented under the Act of 1819, and be accompanied by a certificate that the patent is surrendered to you. If the correction of the entry is authorized, you will, before the money is refunded, or the change of entry noted on your books, require the party to execute, upon the patent, a relinquishment in the following form :

“Know all men by these presents, that, in pursuance of the provisions of the Act of Congress, approved on the 24th day of May, 1828, entitled ‘An act supplementary to an act entitled an act providing for the correction of errors in making entries of lands at the land offices, passed March third, eighteen hundred and nineteen,’ and in order that a patent may be granted to me for the ——— of section ———, in township ———, of range ———, in lieu of the tract herein mentioned, I hereby surrender and relinquish unto the United States of America all my right, title, and

interest of, in, and to, this patent, and to the land therein described. In testimony whereof, I have hereunto signed my name, and affixed my seal, this _____ day of _____, 183—.

Signed, sealed, and delivered, in presence of _____.

At the foot of the above relinquishment, you will give a certificate, stating the precise cause of the error.

In all cases where patents have been issued, you will require a certificate from the county clerk, or other officer having charge of the books in which any conveyance, &c., of the land is required to be recorded to give it validity, stating that the records of such office do not exhibit any conveyance, or other incumbrance, of the land in question. The deed of relinquishment must be executed before two or more witnesses, and be acknowledged before a justice of the peace, with the clerk's certificate of magistracy annexed.

Whenever the change of entry is ordered, the certificate of purchase will be cancelled, and retained in this Office.

The Receiver will take a receipt from the purchaser for the purchase money of the tract erroneously entered, as if the same was refunded, which receipt will be a voucher to the Receiver's credit, to be introduced into the proper monthly and quarterly accounts in the following manner, viz :

"By this amount refunded to _____, agreeably to instructions from the General Land Office, dated the _____, being the purchase-money of the _____ quarter of section No. _____, in township No. _____, of range No. _____, containing _____ acres, erroneously entered by him, and again charged to me, in the purchase of the _____ quarter of section No. _____, in township No. _____, of range No. _____."

The Receiver's receipt for the purchase money of the corrected entry is, as well as the Register's certificate of purchase, to bear a new number. By this proceeding the corrected entry becomes an original transaction, and will appear as such in all your accounts.

I am, very respectfully,

Your obedient servant,

_____, Commissioner.

The Register and Receiver of the Land Office at _____.

No. 666.

Circular to Registers and Receivers of United States Land Offices.

GENERAL LAND OFFICE,
September 15, 1843.

Gentlemen :—In conformity with instructions from the Secretary of the Treasury, that this Office will hereafter report for his directions "in the manner prescribed by the Act of January 12, 1825, *all cases* of claims for repayment of money where a sale of public land has been erroneously made," you are hereby instructed, that where a private entry shall hereafter be annulled by the subsequent establishment of a pre-emption claim to the same land, you are to report to this Office such erroneous sale, (in the manner prescribed by the Circular of August 31, 1830,) and accompany such report *with the written application of the party for a return of the purchase-money*, which, instead of being repaid as heretofore by an order from this Office, will be repaid by what is termed a Treasury refunding warrant, under the provisions of the aforesaid Act of 12th January, 1825, entitled "An act authorizing repayment for land erroneously sold by the United States."

Should there remain at your office any case of the character referred to, where repayment heretofore ordered by this Office has not been made, the Receiver is now instructed to withhold payment and to report the case for repayment in like manner as above mentioned.

Application in like manner is to be made for repayment of an *excess* of purchase-money, where a tract of land has been, or shall be erroneously sold for, a quantity *greater* than that indicated by the township plat.

Should there exist at the Receiver's office any unpaid order of this Office, for the return of purchase-money in any case of error of a character other than that of the classes above mentioned, (*viz*: error in calculating the purchase-money of the acres correctly indicated in the receipt and certificate of purchase; or in permitting the entry of a pre-emption claim which has been afterwards declared to be void; or in permitting the entry at private sale of a tract of land which had not been previously offered at public sale;) the Receiver in any such instance is hereby instructed to withhold payment, and immediately to report the case to this Office.

Very respectfully,

Your obedient servant,

_____, Commissioner.

No. 667.

Circular in relation to cases of repayment of Purchase-money and changes of entry.

GENERAL LAND OFFICE,
January 19, 1854.

Gentlemen:—The Circulars of the 31st August, 1830, 23d July, 1849, and 20th April, 1853, not embodying all that is now required of applicants to have the purchase-money paid on illegal sales refunded, or to effect changes of entry, it is deemed advisable to issue these instructions in circular form.

1st. The duplicate receipt must be surrendered, and accompany the papers in all cases of application for refunding money submitted by you for the action of this Office. Where it has been lost or destroyed, the party applying must advertise it, and give notice of his intention to apply to have refunded the purchase-money, which must be inserted weekly for six weeks in some paper of extensive circulation in the vicinage of the land. A copy of this must be filed with you, having attached the affidavit of the publisher that it was inserted the requisite number of times.

2d. The applicant must make affidavit that he has not transferred or otherwise encumbered the title to the land. This affidavit may be taken before either of you officially, before a notary public using a seal, or a justice of the peace: in the last case, a certificate of magistracy must accompany it.

3d. Where a patent has been issued, and delivered to the patentee, a deed of relinquishment, reconveying the title, (conveyed by the patent,) to the United States, should be made. This deed of relinquishment should be recorded, and a certificate should also be produced from the officer having charge of the books in which conveyances are required to be recorded, showing that said deed is so recorded, and that the records of his office do not exhibit any other conveyance or encumbrance of the title to the land.

4th. In cases of a change of entry, as the purchaser will reasonably wish to hold some evidence of his title until the issuing of the patent, he must first designate the tract he desires to enter, and effect the change of entry, and then across the face of the receipt issued upon the original entry, (which will be returned to you from this Office when the case has been de-

cided,) the Receiver should note the facts of the case, to wit: that the entry has been changed from the tract paid for by said receipt, to another, designating the latter, and the number of certificate issued thereon. The receipt must then be delivered to the party, to be surrendered when the patent is delivered to him.

JOHN WILSON, Commissioner.

Register and Receiver at —.

No. 668.

Repayment refused, for the reason that a certain Conveyance of the Land was not produced.

DEPARTMENT OF THE INTERIOR,
February 26, 1852.

Repayment cannot be authorized in this case in the absence of the original or a duly certified copy of the deed from Cox and Martin to Dixon. The certificate of the Register of Caddo parish, of the execution of such a deed is not sufficient. He does not certify, nor is he legally constituted judge, as to the formality and legality of the deed, and hence, his certificate, if full to that effect, would not be admissible as a substitute for the deed itself.

A. H. H. STUART, Secretary.

Commissioner of the General Land Office.

No. 669.

A Claimant for Repayment of Purchase-money, who failed to file a written application to purchase, not entitled, nor are the Receiver and his sureties liable in this case.

DEPARTMENT OF THE INTERIOR,
March 8, 1852.

In the case of John H. C. Meyer, submitted in your letter of the 7th June, 1850, and to which my attention has been called by a letter from the Hon. A. C. Dodge, dated the 25th ultimo, it appears that said Meyer paid to the Receiver of public moneys at Dubuque, Iowa, without having previously filed with the Register an application or memorandum in writing, as required by the Act of 24th February, 1810, the sum of \$100, which the Receiver omitted to pay over to the United States, or otherwise to account for; the land so paid for being found to have been previously sold, Mr. Meyer asks that the Government will refund to him his purchase-money. But inasmuch as the Receiver's accounts have been settled and closed, and he since dead, and his estate represented to be insolvent, you submit the question, whether Mr. Meyer can maintain an action of covenant against the Receiver and his sureties, under his official bond, for the recovery of the money paid. In reply, I have to state, that the money cannot be refunded to Mr. Meyer by the United States, for two reasons: First, because it was never paid into the Treasury of the United States, and Second, that as the claimant failed to observe the pre-requisites of the law, the payment made by him to the Receiver, was not a legal payment for which the United States is responsible, or for which the Receiver and his sureties are liable, under his official bonds; and I am of the opinion also, although that is a judicial question, which can be determined only by the

courts, that Mr. Meyer cannot maintain an action against the Receiver's sureties, under his bond, the conditions of the bond having been complied with by the Receiver accounting to the United States for all the money which legally came into his hands. Had the claimant complied with the law, by making application in due form, &c., the United States would be bound to repay to him the amount paid by him to the Receiver, and look to the Receiver or his sureties for the amount. The receipt of the money under such circumstances, would have been an official act, within the pale of the Receiver's authority, which would have been covered by the official bond, and binding on the United States. But the fault was with the claimant, in not observing the requirements of a public statute, the ignorance of which, however hard it may appear in particular cases, cannot be admitted as a ruling principle.

I am, &c.,

A. H. H. STUART, Secretary.

Commissioner of the General Land Office.

No. 670.

The purchaser having obtained repayment of the Purchase-money, a party producing the receipts and claiming to be an assignee, not entitled.

DEPARTMENT OF THE INTERIOR,
July 24, 1852.

I herewith return the papers submitted with your letter of the 22d inst., in support of the claim of Robert Davidson for repayment, under the Act of 12th January, 1825, of the purchase-money paid per Jackson, Missouri, entries No. 4181 and 4190. The facts in this case appear to be as follows: On the 5th October, 1836, Henry Pease purchased of the United States the lands embraced in these entries, and paid to the Receiver of public moneys, therefor, the sum of \$844 50. Having subsequently learned that the sales were void by reason of a prior confirmation of the land to another person, he came forward, in the year 1841, and asked that his purchase-money might be refunded to him under the said Act of 1825. As no evidence was found in the Land Office that he had transferred or incumbered his title in any manner, and it not being at that time the practice of the office to look beyond the record, no doubt was entertained as to his right to receive the money, and it was accordingly refunded to him. Years after these transactions, Mr. Davidson appeared, and then, for the first time, apprised the Government that shortly after Pease purchased the land of the United States he had sold and conveyed it to him, and he now claims to have the money refunded to him, upon the ground that it was illegally and wrongfully paid to Pease. * * * * It was his, Davidson's, duty to file with the Land Office the proper evidence of his title, and his failure to do so caused the repayment of the money to Pease. The fact of his having had his deed recorded in the county in which the land was situated is immaterial, as it was no notice to the Government. Receipts are not muniments of title, but merely evidence of payments of money to the Receiver.

I am, &c.

A. H. H. STUART, Secretary.

Commissioner of the General Land Office.

No. 671.

The Act of 26th February, 1853, does not embrace debts due by the United States, but claims only.

DEPARTMENT OF THE INTERIOR,
August 3, 1853.

In reply to your letter of 22d April last, in relation to the sale by the United States since the 28th September, 1850, of lands which have been subsequently found to be swamp or overflowed. I enclose a copy of a letter from the Commissioner of the General Land Office on that subject, dated May 7, 1853. You will perceive from the Commissioner's letter, that the only difficulty apprehended by him in executing the act of the legislature of the State of Michigan in relation to the assignment to her of the purchase-money paid for entries so made, was to be found in the provisions of the Act of Congress of 26th February, 1853, entitled, "An act to prevent frauds upon the Treasury of the United States." Since the date of that letter, the provisions of that act have been examined with reference to the assignment or transfer of money paid for lands erroneously sold by the United States; and it has been determined "that such cases do not come within the spirit of the Act of 26th February, 1853, but should be regarded as debts due by the United States." There would, therefore, seem to be no difficulty now in executing the act.

I am, &c.,

A. H. H. STUART, Secretary.

P. Hibbie, Commissioner of Michigan Land Office.

No. 672.

Where a patent has issued, repayment refused until a Deed of Relinquishment should be filed.

DEPARTMENT OF THE INTERIOR,
December 19, 1853.

When a patent has issued, a deed of relinquishment reconveying the title, (conveyed in the patent,) to the United States is required. This deed of relinquishment should be recorded, and a certificate should also be produced from the officer having charge of the books in which conveyances are required to be recorded, to give them validity, showing that said deed is so recorded, and that the records of his office do not exhibit any other conveyance or incumbrance of the land. This is necessary, because by the issue of the patent the title passes from the United States and becomes subject to the local laws of the State, so that to ascertain whether the purchaser has disposed of the title conveyed to him by the United States or not, enquiry must be made of the officer with whom the information of such conveyances is required to be lodged, in order to give them validity. It is also necessary that the fact of recording the deed of relinquishment should be shown in the Recorder's certificate, for the further reason that otherwise the patent might convey the land, and the deed of conveyance be presented for record immediately after his certificate of non-incumbrance has been given, and yet, in some of the States at least, he could not refuse to record it. When no patent has issued, the title of the purchaser is a mere inchoate interest, the transfer of which he may or may not at his option have inscribed upon the county records. In such cases, the affidavit of non-incumbrance is resorted to as the best mode of determining whether

such incumbrances exist or not, the fact being solely within the knowledge of the party applying for the repayment, and, therefore, not otherwise ascertainable with certainty, &c., &c.

Very, &c.,

A. H. H. STUART, Secretary.

Commissioner of the General Land Office.

No. 673.

A party having applied for a change of entry, acquires such a right to the land so designated, as cannot be defeated by the subsequent application of another to purchase.

DEPARTMENT OF THE INTERIOR,
December 31, 1855.

I herewith return the papers submitted in your letter of the 26th instant, on the appeal of B. B. Siggins, attorney of Stephen Baldwin, from the decision of your office, in reference to land in the Chariton District, Iowa, claimed by him under his application for a change of entry. Having, when the application for a change of entry was made, designated the tracts to which he desired his money applied, (they being then vacant, and the land he intended originally to have entered, not so vacant,) he acquired such a right thereto, in my opinion, as could not be defeated by the application of another, not only nearly a year subsequent to his designation, of such tracts, but after full action had been had on his application for a change, and its allowance communicated to the land officers.

The entry made by Calvin N. Anderson should be cancelled, and the land awarded to Stephen Baldwin. In regard to the excess of purchase-money between that paid for the original entry and that applicable to the tracts embraced in the change of entry, the return of which, I discover from one of the accompanying papers, has been refused on the ground of the absence of any law authorizing it, I have only to observe, if such is the fact, we cannot supply that absence, but justice would seem to require legislative provision for such cases.

R. McCLELLAND, Secretary.

Commissioner of the General Land Office.

No. 674.

Reinstatement of an entry after the refundment of the purchase-money, refused.

DEPARTMENT OF THE INTERIOR,
February 27, 1857.

Your letter of the 23d inst., submitting various papers connected with the application of Harris Flanagin and Benj. S. Duncan, in regard to certain lands entered at the land office at Washington, Arkansas, by Gabriel W. Denton, has been received. I cannot regard their purchase at a tax sale, of Denton's interest in the land, such an one as would entitle them by virtue thereof to a reinstatement of Denton's entry, after the refundment of the money thereon to the latter in accordance with the prescribed regulations of the Department, and without any notice on their part of such interest, but it is regarded under the circumstances, as affording such

just grounds for relief, that no objection is seen to your permitting them to enter, upon payment of the minimum price of \$1 25 per acre, the land they wish to secure.

R. M'CLELLAND, Secretary.

Commissioner of the General Land Office.

No. 675.

A relinquishment of title must accompany applications for repayment where a Patent has issued.

DEPARTMENT OF THE INTERIOR,
November 21, 1857.

The papers pertaining to the application of William T. Brumel, for repayment of the purchase-money paid, per St. Louis Receipt, No. 7706, are herewith returned, and said application is not granted, for the reason that no relinquishment of title is endorsed on the patent, or accompanies the case, and no certificate from the county clerk or other officer, stating that the records do not exhibit any incumbrances of the land in question, is filed herewith. Where a patent issues, the title becomes subject to State laws, and relinquishments should be required in all cases of this character.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 676.

Repayment where the land had been sold by the original Purchaser, cannot be made until a deed of relinquishment is filed.

DEPARTMENT OF THE INTERIOR,
October 27, 1858.

I return herewith the application of Edith King, administratrix of the estate of John King, deceased, for the repayment of the purchase-money on Batesville, Arkansas, Receipt, No. 8414. It being shown by the report of the Register and Receiver, as also by the letter of William Fort, (attorney for Mrs. King) that the land had been sold by the original purchaser, King, it is necessary that a deed of relinquishment (duly recorded) from King's grantee be filed; said deed to be drawn in favor of the heirs and assigns of King.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 677.

A party to be entitled to repayment, must show that he complied with the law in making his entry, &c.

GENERAL LAND OFFICE,
December 20, 1858.

Sir:—Herewith I have the honor to transmit the papers in the disallowed claim of Joseph W. Towne, for repayment of the purchase-money alleged to have been paid to the Receiver of the Danville, Illinois, Land Office,

for the southeast quarter of northeast quarter of section 25, township 27, range 14, west, per receipt No. 18971, from which decision Benj. F. Ingraham, attorney for the party, has appealed to you; said appeal having been referred to this Office for report, the following facts, &c., touching the case are respectfully submitted:

The Register's certificate, the Receiver's (Office) receipt, the abstract of lands sold, and register of receipts from the Danville, Illinois, Office, all represent that the east half of southeast quarter section 25, township 27, range 14, west, containing *eighty acres*, was entered by Joseph W. Towne, on the 26th December, 1855, at \$2 50 per acre, amounting to \$200. The purchaser's application, (a copy of which is on file,) and Receiver's duplicate receipt represent, that the southeast quarter of northeast quarter and east half of southeast quarter, section 25, township 27, range 14, west, containing *one hundred and twenty acres*, were applied for and entered by Mr. Towne, at \$2 50 per acre, amounting to \$300. From this statement it will be seen, that the purchaser's application and Receiver's duplicate receipt call for a forty-acre tract (which had been previously sold to another party) not described in any of the regular returns to this Office, and making a difference of \$100 in the amount of the purchase-money. The aid of this Office has been extended to the party, to enable him to show by satisfactory proof, but without effect, that he never received back from the Receiver the sum alleged to have been paid for the southeast quarter of northeast quarter; the previous sale of which was not, in all probability, discovered until after the issue of the duplicate receipt, but prior to the issue of the certificate and regular receipt, which are usually sent to this Office.

The grounds upon which the application for repayment is disallowed are, that the sale to Mr. Towne of the southeast quarter of northeast quarter has never been reported to this Office, nor the money alleged to have been paid therefor, received into the Treasury of the United States; in addition to which, the Act of Congress authorizing purchases of the public land is a contract in which the law has stipulated certain conditions, so as to secure fairness, protect private interests, and save the public from fraud or speculation, by certain checks. When these conditions have not been strictly performed by the one party, to wit, the applicant, it is at his own peril, and the Government is thereby relieved from responsibility. It is not shown that these stipulations were, in this case, strictly complied with by the applicant, and hence the Executive, in the opinion of this Office, has no power to refund, and consequently that could not be done unless Congress so order by special enactment.

Very respectfully, your obedient servant,

THOS. A. HENDRICKS, Commissioner.

Hon. J. Thompson, Secretary of the Interior.

Affirmed, August 9, 1859, by Secretary Thompson.

No. 678.

For Repayment, affidavit of non-incumbrance required in Pre-emption, as in other cases.

DEPARTMENT OF THE INTERIOR,
January 18, 1859.

I have considered your report of the 15th instant, enclosing the application of Daniel E. Rouse, for the repayment of the purchase-money on Red Wing, Minnesota, Receipt, No. 1076.

The entry having been made under the Pre-emption Act of September 4, 1841, it was thought by you unnecessary to require the usual affidavit of non-incumbrance. The same grounds exist in connection with entries under the above Act, by which I was governed in making the decision of September 11, 1858, relative to applications for repayment on illegal entries made under the Act of August 4, 1854, and you will, therefore, extend the requirement contained in the 2d section of the Circular of January 19, 1854, to embrace all cases of repayment, when the entries have been made by virtue of the Act of September 4, 1841. The application of Mr. Rouse is returned, and when the proper affidavit has been filed, you will please submit the case for my approval.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 679.

Applications for Repayment where a Patent has been issued, must be accompanied by a relinquishment, and a certificate of record.

DEPARTMENT OF THE INTERIOR,
March 25, 1859.

I herewith return the application of Hon. H. M. Rice, for the repayment of the purchase-money paid on Stillwater, Minnesota, Receipt, No. 162.

In this case, the patent has been issued and delivered to the patentee. The deed of relinquishment, however, is not accompanied by the certificate of the officer having charge of the land records of the district or county in which the land is situated, showing that said relinquishment is duly recorded, and that no other conveyance or encumbrance of title appears upon his books. The requirement of the Department upon this point must be met, and you will please notify Mr. Rice, that his compliance with the regulations will be necessary to obtain my approval.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 680.

A husband should join his wife in the application for Repayment of Purchase-money in a given case.

DEPARTMENT OF THE INTERIOR,
June 25, 1859.

Sir:—I herewith return the application of Mrs. Eliza Jeannette Lowey Allen, for the repayment of the purchase-money paid on Tallahassee, Florida, Receipt, No. 12970.

In this case the applicant having married subsequent to the purchase, I consider it necessary that her husband join in the application, and have to request that you will so advise Mrs. Allen.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

TITLE XV.

Rehearing.

No. 681.*Rule in relation to Rehearings of decided cases.*DEPARTMENT OF THE INTERIOR,
May 23, 1855.

The rule of the Department founded on the practice of the courts, requires that the new evidence on which a review is asked, shall be shown not to have existed at the time of such former decision, or that its existence was not then known to the parties, or if so, that it was beyond their reach.

R. M'CLELLAND, Secretary.

Commissioner of the General Land Office.

No. 682.*Re-opening of a case will only be granted under a specified state of facts.*DEPARTMENT OF THE INTERIOR,
December 8, 1855.

Sir:—After a case has been fully examined at the local Land Office, all parties having due notice, and the case is decided and comes before the Department on appeal, I should not undertake to re-open it, and remand it for examination, unless upon affidavits furnished by one of the parties, tending to show that the testimony submitted on the appeal, was not the same as that originally presented, either from a suppression of a portion material to the issue, or an alteration of that submitted.

Very, &c.,

R. M'CLELLAND, Secretary.

Hon. H. M. Rice.

No. 683.*A re-investigation will not be granted upon an allegation that a better case might be made.*DEPARTMENT OF THE INTERIOR.
March 29, 1856.

“As the matter has been twice examined by the district officers, and with the same results, and the parties went to trial on the existing testi-

New Trial.

On motions for new trials on newly discovered evidence, it is a well settled rule not to grant them, if the evidence is merely cumulative, or in corroboration of testimony to a point presented at a former trial.—(Commissioner's Report to the Secretary of the Interior, of August 27, 1859.)

mony, and the defeated party bases his appeal to the Department, on the proof filed, it would be trifling with the rights and interests of one party, to re-open the case under such circumstances, because of the allegation of the attorney of the other, that a better case might be made for his client if such course were pursued."

R. M'CLELLAND, Secretary.

Commissioner of the General Land Office.

No. 684.

The Rules of the Courts in regard to Rehearings of Decided Cases should be adopted.

DEPARTMENT OF THE INTERIOR,
February 17, 1857.

The case should be treated as a similar one would be in court, and not re-opened, unless it was clearly shown, that with ordinary diligence the testimony, (material,) could not have been procured, or that some point that could not have been anticipated was raised, which took the party by surprise.

R. M'CLELLAND, Secretary.

Commissioner of the General Land Office.

No. 685.

A Rehearing will not be granted, unless upon the production of new and material testimony.

DEPARTMENT OF THE INTERIOR,
March 16, 1858.

Your letter of the 28th ultimo, directed to the President, requesting a re-opening of the contested pre-emption case between yourself and W. W. Koons, having been referred to this Department, I have to advise you, that the case has been decided by me, and the same cannot be re-opened, unless upon the production by you of new and material testimony, which could not have been obtained, or was not known at the time of the former hearing. The action in the case will otherwise be final, so far as the Executive Departments are concerned, and you must resort to the courts for such relief as you may be entitled to.

Very, &c.,

J. THOMPSON, Secretary.

S. G. Stevens, Fort Dodge, Iowa.

No. 686.

A new trial granted in a case where one party proves an earlier date of settlement than the one erroneously fixed in his Declaratory Statement.

DEPARTMENT OF THE INTERIOR,
February 3, 1859.

Herewith I return the papers received with your letter of 8th December last, appertaining to the pre-emption contest between Jonathan Davis and James Friley, each claiming the right of pre-emption to a certain tract

of land in the Kickapoo, Kansas Territory, Land District. In view of the fact that the said Davis proved, at the time the case was heard by the Register and Receiver, an earlier date of settlement than that fixed in his declaratory statement, and inasmuch as said Friley appears to have been surprised thereby, a reinvestigation of the case will be ordered. You are therefore requested to remand said case to the land office for a rehearing.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 687.

A reconsideration is not granted, unless material evidence has been discovered.

The purchase of a Pre-emption Right, by a party innocent of any knowledge of fraud, will create no equity in such purchaser.

DEPARTMENT OF THE INTERIOR,
Washington, May 21, 1859.

Sir:—I have to acknowledge the receipt of your letter of the 25th April last, in regard to the rejection of Jacob L. Huggins' pre-emption entry of the north half of the northeast quarter, and the north half of the northwest quarter of section 24, township 120, range 31, Forest City District, Minnesota, by my decision of the 27th December, 1858.

Passing by the question, whether the rejection, under the Act of 26th June, 1856, is not as conclusive in a case reported by the Commissioner as a confirmation would be, I remark: First, That a reconsideration of a case is not granted, generally, unless it is shown that material evidence is discovered which could not have been produced before the decision was made. Secondly, The affidavit of Dudley Taylor, endorsed by you, does not, in my opinion, establish the *bona fide* character of the claim of Huggins.

The law of Congress having made void all assignments of pre-emption rights before the issuance of a patent, the purchase from Huggins, by a party innocent of any knowledge of his fraud, will not create any equity in such assignee, which this Department can recognize in any way.

Very, &c.,

J. THOMPSON, Secretary.

C. C. Andrews, Esq.

No. 688.

Appeals to the President from Decisions of the Departments.

As applications are frequently made to the President of the United States by claimants who consider themselves aggrieved by the decisions of the Heads of the Executive Departments, and who, therefore, appeal to him for a reversal of those decisions, it is deemed proper to publish the following letter, addressed by the President to a highly respectable banking firm, which sets forth his reasons for declining to entertain such appeals.

Washington, December 12, 1859.

Gentlemen:—I have received your letter of the 9th inst., containing a formal appeal to me from a decision of the Secretary of the Treasury against you on two points: 1st, his refusal to permit you to deposit at San Francisco any portion of the Government loan taken by you under the proposals

of the Secretary, of the 17th of December, 1858; and 2d, his refusal to refer the question to the Attorney-General.

In answer, I have to inform you that an appeal does not lie to the President from the decisions of the heads of the different Executive Departments. This has been settled both by judicial decisions and by the practice of the Government, including that of the present Administration. Their acts and decisions are the acts and decisions of the President, for which he is held responsible; and they are his in fact, in all cases of difficulty and importance. It is for this, besides other reasons, that cabinet consultations are held twice in each week, where questions of public interest, as they arise, are canvassed and decided. If the President were bound to hear appeals from the heads of the different Departments in all cases where claimants consider themselves aggrieved, it would be impossible for him to undergo the labor. In that case, every claimant dissatisfied with the decision of any Department might appeal to him for redress; and he would be obliged to re-examine the documents and papers and re-hear the arguments which had been submitted to such Department, and either affirm, reverse, or modify its decision. This would entirely change his intimate relations with his confidential advisers, converting them into inferior courts, and himself into a superior court of errors and appeals. Besides, there would be no equality between private parties and the Government. When the decision of the head of a Department was in favor of the claimant, it would be final; but, if it were against the claimant, he would be entitled to an appeal to the President. The truth is, such an appellate jurisdiction would render it impossible for the President to discharge his high duties to the country, and would resolve his office into a tribunal to hear and determine private claims in the last resort.

Nor is there the least necessity for any such jurisdiction. Congress, by the Act of February 24, 1855, established a Court of Claims for precisely such cases as you have presented. To that court, or to Congress, I beg leave respectfully to refer you.

JAMES BUCHANAN.

TITLE XVI.

Miscellaneous, including Virginia Military Bounty Land Claims.*

No. 689.

Circular to Registers, in relation to the location of Revolutionary Bounty Land Scrip, under "Act of August 31, 1852."

GENERAL LAND OFFICE,
August 17, 1853.

Sir:—Enclosed herewith you will find a copy of the "Rules and Regulations" of this Office under the Act of Congress, approved August 31, 1852, entitled "An act making further provision for the satisfaction of Virginia Land Warrants."

By referring to this Act, and section 10, Rules, &c., you will perceive that the scrip issued in satisfaction of this class of warrants "is receivable in payment of any lands owned by the United States, subject to sale at

* Virginia scrip cannot be applied by pre-emptors. It can be applied as so much gold and silver in the purchase of any land subject to sale at private entry, and may be used in payment for lands held at graduated prices, and also for railroad lands.

Virginia land scrip is so far the representative of money as to be subject to the same equitable deductions, in case of indebtedness to, or frauds committed upon, the government, as may be made in the case of a sum of money from the government to one of its debtors.—(Opinion of Attorney-General, February 9, 1836, vol. 3, p. 35.)

The Treasury (Interior) Department may suspend the issuing of all or any portion of the scrip claimed on a warrant issued for a greater number of acres than may appear to be due, until the true amount can be ascertained.—(Opinion, April 28, 1836, vol. 3, p. 103.)

Land scrip issued in satisfaction of military bounty land warrants, must be regarded as real estate, and go, upon the death of the holder, to the heirs-at-law, and not to the executors and administrators.—(Opinion, November 9, 1838, vol. 3, p. 382.)

Land scrip issued upon the surrender of warrants issued for bounty lands, granted by the United States and by the State of Virginia, for services in the Revolution, should issue to the parties *nominatim*, and to heirs on due proof of heirship.—(Opinion, October 1, 1830, vol. 2, p. 385.)

When issued according to the terms of the warrant, in certain cases, they must be assigned by all the heirs by name, and accompanied with proof of identity, heirship, and proof of assignment.—*Ib.*

It must issue to the heirs or assignees, and not to executors or administrators; for it is to be considered as belonging to the realty.—*Ib.*

The United States have assumed all unsatisfied outstanding military land warrants of the State of Virginia, issued by the proper authorities thereof, for revolutionary services of its officers, soldiers, seamen, and marines, such warrants having been fairly and justly issued in pursuance of the laws of the State.—(Opinion, January 7, 1854, vol. 6, p. 243.)

Land scrip of the United States, issued in exchange for bounty land scrip of the

private entry, except such as are claimed by pre-emption," &c., and can be applied, at the rate of \$1 25 per acre, in the same manner as money.

By reference to vol. 2, Laws, Instructions and Opinions, page 436, you will see instructions dated November 16, 1830, applicable to scrip of a like character; and you are required, in the surrender of scrip, under Act of August 31, 1852, and in the returns thereof to this Office, to conform your action according to the rules set down in the said instructions of November 16, 1830. Clause marked "First, as to location," is not applicable to the present scrip.

You are also advised, that, as this scrip is receivable only for lands "subject to private entry," pre-emptors cannot use it in payment for unoffered land which may be claimed by them.

No charge can be made for the location of said scrip; and after its surrender and before being returned to this Office, it should be properly cancelled.

Respectfully, your obedient servant,

JOHN WILSON, Commissioner.

Register Land Office.

No. 690.

Opinion of the Attorney-General on Virginia Military Bounty Lands

ATTORNEY GENERAL'S OFFICE,

May 30, 1858.

Sir:—In 1784, Virginia ceded to the United States the largest and most valuable body of land that ever belonged to the public domain of any State

State of Virginia, has, in some respects, the qualities of real, and in some of personal estate; but the determination of who is entitled is independent of that question, being specially defined by acts of Virginia or of the United States.—(Opinion, November 11, 1854, vol. 7, p. 32.)

The decisions of the courts of Virginia in regard to conflicting claims to bounty land warrants, under the laws of that State, are to be considered as determining their relative rights, and to be respected by the United States.—(Opinion, March 10, 1856, vol. 7, p. 652.)

But where it has not been satisfactorily determined, by the courts of Virginia, which of two persons "presenting" themselves is the true party entitled, the Secretary of the Interior may well refuse to issue scrip to either.—*Id.*

As to error as to date, referred to in Act of Congress of 29th April, 1816, by which a report of 14th December, 1812, was mentioned in the act, as dated 4th December, 1812, the enquiry was made of the Attorney-General, whether such error is fatal to the confirmation of any claim embraced by the said report of the 14th December, 1812.

The reply of Attorney-General Legaré was: "The construction of a statute is placed by the law in very much the same category as that of wills, (*Butler and Baker's case*, 3 Reps. 27.) and such an erroneous recital in a will would clearly be susceptible of correction by parol evidence. In addition to this, I have the honor to refer you to the case of *Ross v. Borland's Lessee*, 1 Peters, 655, in which the court ruled almost the very point in question here."

The case referred to is under an act which conferred pre-emption rights on persons who, "on that day, in the year 1797, when the country was evacuated by Spanish troops," &c. Such evacuation did not take place until 1798, in March or April. The court held that the act intended to confer a bounty, and it was entitled to a liberal construction in favor of the beneficiaries; that the error in date was immaterial, as the time of the evacuation, and not a particular date, was the essential object of the statute.

The owner can relinquish his scrip in payment for lands purchased in the name of another party, thus obviating the necessity of assignments in such cases.—(See Letter of Commissioner to Register and Receiver at Jackson, Mo., Dec. 13, 1858.)

in the world. But previous to the cession she had promised to give certain portions of it to the officers, soldiers, sailors, and marines, who had served during the revolutionary war in her army and navy. She did not strip herself of the power to fulfil this promise without exacting a pledge that it should be fully redeemed by the Government of the Union. She was generous to her sister States, but she was at the same time true to her own defenders.

The obligation of the United States to satisfy the claims of the Virginia officers and soldiers has never yet been denied by any Department of their Government.

Nor has it ever been doubted, as a general principle, that the claims ought to be settled and adjusted according to the laws of Virginia, and by such tribunals as she, in her own wisdom, might see proper to charge with that duty. What a soldier may be entitled to, is a question of State law; and it is not consistent with the spirit or genius of this Government to interfere with the administration of State laws, or to expound their meaning. When a question is incidentally raised upon them before an officer, or in the courts of the United States, the interpretation they have received in the State is of binding obligation.

At every step which Virginia took in this business, she asserted in words or by clear implication, her right to decide, through her own authorities, upon the validity and amount of the claims made for military bounty land under her laws. She conferred the power successively on her register of the land office, commissioner of war, governor and council, without providing in any case for an appeal.

You ask me if these decisions are in the nature of judicial expositions of the law, and therefore binding. Undoubtedly they are in their character so far like a judicial sentence that they are conclusive upon the parties and their privies. When the constitution or law of any State authorizes a person to decide a given question, the judgment of such person is always conclusive. It makes no difference whether it be a court, a legislative body, an executive officer, or a special tribunal appointed for the purpose. The authority to hear, examine, and decide without appeal, carries with it the power to determine it forever; to make an end of all controversy about it, and to close it against all future inquiry upon either the facts or the law. When, therefore, the State of Virginia authorized the governor and council to settle these claims, a decision regularly made by those officers was as conclusive as if the same jurisdiction had been given to and exercised by the Supreme Court.

But while these decisions are in their own nature conclusive, and by the laws of Virginia must be so regarded, I am not ready to assert that Congress cannot require you to disregard them. It might be an offence against the principles of public morality, an act of perfidy, and a grievous wrong upon the State, to command that all the cases should be overhauled in your Department: but you would still be bound to obey. When Congress was giving you power to exchange scrip for warrants it had a constitutional right to couple the authority with what conditions it pleased; and if a harsh and unfair condition was imposed, the law is not void for that reason. The doctrine of estoppel has no application whatever to legislative acts. The laws passed by Congress are therefore to be the lamp for your feet and the guide to your path.

There is no act of Congress which impugns the right of Virginia to expound her own laws on the subject of bounty lands, or which makes any federal officer a judge of the facts on which a soldier's claim to such lands

may be based, unless the Act of 31st August, 1852, be an exception. Let us see whether it is or not.

That act provided that outstanding bounty land warrants of this kind, which had been issued previously to the 4th of March, 1852, *by the proper authorities of Virginia*, might be surrendered to the Secretary of the Interior, and scrip given in place of them. Thus far there is no denial of the State jurisdiction. On the contrary, the action of the State authorities is made the basis of your whole conduct. Under this provision, if any man should come to your Department demanding scrip for revolutionary services in the Virginia line without a warrant from the "proper authorities" of that State, you would tell him that he had no shadow of right. The want of an adjudication in his favor at home would be so fatal that no proof, however overwhelming, of his right on original grounds, would supply the defect. It is clear, therefore, that a decision by the Virginia authorities is final and conclusive *against* the claimant.

But it is contended, in some quarters, that a decision *in favor of the claimant* is no protection of his right, that it adds no strength to his claim, and that you are bound to look upon it as a mere nullity. If this be true, you must re-examine every case, and if there should be any defect in the proof, or if you differ from the State authorities about their law, you must be governed by your own opinion, without any respect whatever for theirs. A claimant who thinks he has proved his right and got a judgment upon it from a tribunal of competent jurisdiction, must now be taught to understand that the whole proceeding was mere vanity and vexation of spirit, which might have barred him forever, but could not help him forward one step. The adjudication in his favor may have been forty years old; it may have been founded on documentary evidence now lost; on oral evidence never recorded; or, perchance, on the personal knowledge of the governor or council. It is impossible for you to rejudge these cases now with the slightest hope of doing justice, since you cannot read the ashes of burnt papers, nor call dead witnesses from their graves to testify. History has given us no more than an outline of the great public events which occurred in the war of the revolution, and even that outline is dimly traced. But who shall now, after three generations have lived and died, be able to tell you minute circumstances in the life of an obscure man, holding a subaltern office or serving in the ranks? A law which refuses to pay a public debt already established by competent authority, unless it is fully proved again by such evidence as the creditor may be able to fish up from the oblivion of eighty years, is the same thing to all practical intents and purposes as a repudiation of that debt. But if Congress has done this thing it is not your fault nor mine.

Those who maintain this to be the true construction of the Act of 1852, derive their notion from that provision which requires you to be satisfied that each warrant was "fairly and justly issued according to the laws of Virginia." But I think it is a manifest and most palpable error.

Your examination is confined to the fairness and justness which gave character to the act of issuing the warrant. The law does not direct you to investigate any thing else; and it gives you the laws of Virginia as the standard by which you are to measure its fairness and justness. What then is an issuing fairly and justly according to those laws? *Fairly* means *honestly* in this connection, if it means any thing at all. A warrant *fraudulently* issued is not fairly issued. For instance, if the Register should issue one for a claim which had been rejected by the governor and council, you would regard it as void because not fairly issued according to the laws of Virginia. Philologists differ about the origin of *just*; but the question

is not important whether it comes from *jus* a law, or *jubere* to command, since all agree that in its primary and proper signification, *justly* means *regularly, duly, in the way prescribed by law*. If you find one of these warrants to have been honestly and regularly issued, it was fairly and justly issued; for the two phrases are synonymous. I know not how it came to pass that your duty to satisfy yourself of the legal regularity and honesty with which a warrant was issued included the power to try over again the questions of fact and law which were settled by the governor and council. It would be difficult to believe that Congress meant anything so inconsistent with the national honor, even if they had said it; but here, the contrary is expressed in words of which the sense can hardly be mistaken.

It is true that you are authorized to revise the proofs and take additional testimony. But to what end, and for what purpose? Not that you may pick flaws or find defects in the opinions given by the governor and council, but solely to convince yourself that there was no dishonesty, no irregularity, nor no violation of law in the issuing of the warrant. The authority to take testimony for a particular purpose, clearly defined, certainly does not require you to perform a totally different function already performed by others in the regular discharge of their legal duty. A sheriff is bound to see that an execution is regularly issued in due form and by the proper officer, but it does not follow that he may therefore review the proceedings of the court and set aside the judgment.

Fairly, justly, according to the laws of Virginia,—these words taken separately, or all together, amount to no more than what might have been said in a single word—*regularly* or *legally*. The only difficulty arises out of that overflowing redundancy of expression for which the framers of statutes have such a fondness, that they often obscure their meaning by it.

Believing, as I do, that you cannot go behind the adjudications of the governor and council, and taking it for granted that such will be your own view, I need not answer your other questions. But I may as well say, in closing, that if it were my duty to give an opinion on the rights of the staff officers, it would be in full concurrence with the Executive of Virginia. The judgments they have obtained in their favor were not only pronounced by competent authority, but were, in themselves, entirely proper and legal.

I am, very respectfully, yours, &c.,

J. S. BLACK.

Hon. Jacob Thompson, Secretary of the Interior.

No. 691.

Opinion of the Attorney General on Virginia Military Bounty Lands.

ATTORNEY-GENERAL'S OFFICE,
June 28, 1859.

Sir:—In the opinion which I gave you, on the 30th May, 1858, upon the Act of August 31, 1852, concerning Virginia Bounty Lands, I said that a decision by the proper authorities of Virginia, in pursuance of which a warrant was justly and fairly (that is, legally and honestly) issued, was binding and conclusive upon you. I have no reason to change that opinion. On the contrary, a reconsideration of it, after the lapse of a year, has deepened the conviction that I was right.

The three questions, therefore, which you now propound to me, I am compelled to answer as follows:

1. In order to entitle the holder of a warrant to scrip in place of it, it

is not necessary for him "to satisfy you that the warrant was issued for military services so rendered." The decision of the proper State authorities is conclusive upon that point, provided the warrant was issued without fraud and according to the forms of law.

2. The discovery, after the date of the warrant, of evidence showing or tending to show that the military services for which it was issued were never rendered, would not authorize you to set aside the sentence of the governor and council. You have no more power to grant a new trial than you have to reverse the judgment of the State authorities on appeal; but if you discover that the Governor of Virginia and the executive council have been imposed upon by perjury or fraud, it might be well to send the case back with an exposure of it; and, if that be done, I can hardly doubt that the responsibility would be there very quickly assumed of cancelling the warrant.

3. It can scarcely be necessary to add, in reply to your third question, that proof from the "Washington papers" will not overturn the conclusive presumption arising out of the warrant itself.

I am, very respectfully, yours, &c.,

J. S. BLACK.

Hon. Jacob Thompson, Secretary of the Interior.

No. 692.

Opinion of the Attorney-General on Virginia Military Bounty Lands.

ATTORNEY GENERAL'S OFFICE,
June 28, 1859.

Sir:—I have received your letter asking for my opinion upon the claim made, by the heirs of Commodore Barron, for land scrip under the Act of August 31, 1852. It appears that the ancestor of the claimants was duly commissioned as the "Commodore of the armed vessels of the State," and served as such until the close of the Revolutionary war. Proof of this service was made in 1783. In 1831, the quantity of land to which a brigadier general would be entitled, for the same length of service, was allowed by the governor and executive council of the State. In 1857 the executor of Commodore Barron, being of opinion that his rank should be assimilated to that of a major general in the army, memorialized the governor for such an allowance of land as a major general would have received. The governor, concurring in that opinion, made the allowance prayed for, and thereupon a warrant was issued to the heirs-at-law of James Barron, Sr., on the 4th of November, 1857.

Can you issue scrip on this warrant? I feel no hesitation about answering that question in the negative. The Act of 1852 provides for the case of "unsatisfied and outstanding military land warrants, or parts of warrants, issued or allowed *prior to the 1st of March, 1852.*" This warrant was not *outstanding* nor *unsatisfied*, for it did not exist until after the day mentioned; nor was it *issued* before that time, its date, as above mentioned, being nearly six years later. But the argument seems to turn upon the disjunctive form of expression, "*issued or allowed;*" and it is contended that, if the claim was *allowed* before the first of March, 1852, it makes no difference that the warrant was issued afterwards. This I dissent from for several reasons.

1. I think that the word "allowed" is a mere repetition of the same idea, which was expressed by the other word "issued;" that they are

synonymous; that the legislature did not intend to provide for two different contingencies, but only for one contingency by two different words.

2. The Act of Congress does not embrace any but warrants which were unsatisfied and outstanding prior to the 1st of March, 1852, no matter when they were issued.

3. I do not believe that, in any true sense of the word, it can be said that this warrant was *allowed* until it was *issued*; but if we take the more latitudinous construction, it was not *allowed* by the Executive of Virginia, because there was no authority to issue this particular warrant before Governor Wise gave it in 1857.

4. The Act of 1852 requires you to be satisfied that the warrant was issued *fairly and justly*, according to the laws of Virginia. This was no doubt *fairly issued*, but *not justly*, according to the laws of Virginia, because it was allowed and issued *after* the time limited for the prosecution of such claims by the statute of Virginia, passed on the 16th of March, 1850.

I do not deny that this claim is a meritorious one. It may work some hardship to reject it; but I think you are powerless to furnish any relief.

The law is altogether against it, and Congress can alone supply what is needed to make it legal.

I am, very respectfully,

J. S. BLACK.

Hon. Jacob Thompson, Secretary of the Interior.

No. 693.

Changes of entry allowable by the Commissioner.

DEPARTMENT OF THE INTERIOR,
January 28, 1850.

The error in this case having been committed by the party himself, is not provided for by the Act of 3d March, 1819, but by Act of 24th March, 1824; and as, under that law, the power to authorize a change of entry is conferred upon the Commissioner of the General Land Office, it remains for you to say whether the party is entitled to the relief provided for by that act. I would remark, however, in no case of a change of entry can a person substitute a tract which has been entered by another, though it be the one he originally intended to enter.

Very, &c.,

T. EWING, Secretary.

No. 694.

Showing the average cost of purchasing and extinguishing Indian titles, of surveying, selling, &c.

GENERAL LAND OFFICE,
March 19, 1857.

Sir:—In reply to the inquiries of Mr. R. L. S. Beale, in his letter of the 10th instant, referred to this Office, and herewith returned, I have the honor to state, that by the estimates of this Office, which will be found in the Annual Report of November 30, 1853, statement F, page 47, printed with the President's Message of that year,—

The average cost of purchase and extinguishing the Indian title, per acre, is	cents, 14.41
The average cost of surveying, per acre, is	2.07
The average cost of selling and managing, per acre, is	5.32
Total average cost, per acre, ...	21.80

Statement E, with the same report, will show the surfaces of States and Territories and disposal of the public domain, to 30th June, 1853, being the latest in print.

I am, very respectfully,

Your obedient servant,

THOS. A. HENDRICKS, Commissioner.

Hon. Jacob Thompson, Secretary of the Interior.

No. 695.

A request having been preferred, that an abstract question should be submitted to the Department, with the view of obtaining the opinion of the Attorney-General, the following reply was given.

DEPARTMENT OF THE INTERIOR,
December 10, 1857.

The official action of this Department is, in my opinion, proper only as adjudications are necessary in the course of Executive business imposed by law. An opinion on a legal question which may arise, must be reserved until the question is involved in a case before us, demanding our action.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 696.

The actual expenses of an officer in proceeding to a depository to obtain coin on a Treasury Draft, can only be allowed where the journey is necessary to that end.

DEPARTMENT OF THE INTERIOR,
March 15, 1858.

I have considered your report of the 10th instant, upon a claim presented to your office by the Surveyor-General of Minnesota, for expenses incurred in collecting a Treasury draft for \$3,600, payable to his order, and drawn upon the United States depository at Dubuque, Iowa.

The amount of the charge is \$72, paid to Borup & Co., (publicly known as bankers and brokers,) and they certify that it cost them \$72 to collect said draft. The law and the policy of the Government have not been favorable to the allowance of a discount to an officer who sells a Treasury draft, and if a banker be employed to collect, at a stipulated rate of exchange, the case is regarded as about the same as though there had been an actual sale of the draft below par. The actual expenses of an officer or his clerk or messenger, in proceeding to a depository to obtain coin on a Treasury draft, can only be allowed, where the journey is necessary to that end; and the charges for such expenditures must be reasonable, and must be supported by proper vouchers; and upon all of these points you should be satisfied before passing any account therefor. The payment of \$72 to

Borrupt & Co., by the Surveyor-General of Minnesota, does not come within the policy and regulations of this and the Treasury Department, as I understand them, and as above explained, and should not therefore be allowed.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 697.

The State of Iowa is not entitled to five per cent. on the value of lands located in her limits by Military Land Warrants, &c.

DEPARTMENT OF THE INTERIOR,
September 20, 1858.

In reply to your letter of the 7th instant, in relation to the application for an allowance of five per centum, claimed to be due the State of Iowa, on military land warrant locations, I have the honor to state, that in my opinion the Act of 1847, to which you refer, is a bounty land act, and that no distinction can properly be made between locations made under it and those made under other bounty land laws. The location of warrants issued under the Act of 1847, is not considered as constituting a sale of the public lands, as contemplated by the act admitting Iowa into the Union. That act appropriates five per cent. of the *net proceeds* of sales of all public lands for making public roads and canals within the State. There being *no net proceeds* accruing from locations by military land warrants, the allowance of five per centum on such locations cannot be regarded as having been appropriated or provided for by law.

J. THOMPSON, Secretary.

Gov. R. P. Lowe, Iowa.

No. 698.

History of the Reservation of Rock Island, Illinois, for Military purposes. Since the repeal of the Act of 3d March, 1819, by that of 12th June, 1858, the sale of Military Reservations is unprovided for by law.

DEPARTMENT OF THE INTERIOR,
Washington, Jan. 24, 1859.

Sir:—In response to the resolution of the House of Representatives, adopted on the 8th instant, calling upon the Secretary of the Interior, to communicate to the House “the present situation of the military reservation of Rock Island, in the Mississippi river, whether the same has been transferred by the War Department to the Interior Department, and if so, when; and whether the same has been trespassed upon by persons claiming pre-emption rights, and whether any decision has been made by said Department of the Interior in favor of such pre-emption, to purchase the said reservation at the minimum price of one dollar and a quarter per acre;” I have the honor to report the following brief sketch of facts disclosed, by reference to the files of this Department, having a bearing upon the “present situation of the military reservation,” and explaining the answers which I propose to give to the inquiries addressed to me by the resolution.

Rock Island is situated in the Mississippi river within the limits of the

State of Illinois, in fractional township 18 north, range 2, west, and fractional township 18 north, range 1, west of the fourth principal meridian.

It was surveyed 1833, and the survey was approved November 23, 1858. It contains eight hundred and ninety-six and ninety-four hundredths acres. A military post, known as Fort Armstrong, was established and occupied, on the island, as early as 1815 or 1816.

On the 2d March, 1825, Secretary Calhoun addressed a letter to the Commissioner of the General Land Office, in which he said, "The island is deemed necessary for military purposes, and I have to request that it be accordingly reserved for such purposes."

On the 8th April following, the Commissioner addressed a letter to the Register of the Land Office at Springfield, Illinois, in which he says, "It is deemed necessary by the War Department, to have this island reserved for military purposes. No survey of it having been returned to this Office, this is to advise you that the island is to be considered as reserved for the use of the Government."

Secretary Cass, afterwards, on the 11th September, 1835, addressed a letter to the Commissioner of the General Land Office on the subject, saying, "I have to request, that instructions may be given to the proper Register and Receiver, I presume, at Galena, not to offer at public sale nor to grant pre-emption rights to any of the public lands on Rock Island, so long as the position is required for military purposes. I am decidedly of opinion, that the whole island should be kept in possession of the troops."

The Commissioner accordingly, under date of the 15th of the same month, instructed the Register and Receiver at Galena, that "the Department of War had apprised this Office, that Rock Island in the Mississippi river, and which has been in the occupation of the public since 1816, * * * is essentially necessary to be reserved for the use of that garrison. You are therefore directed to reserve the same from any public sale, and if any individuals, who may have occupied by sufferance any portion thereof, should attempt to acquire a pre-emption right on said island, in virtue of the Act of 19th June, 1834, such claim cannot be recognized."

This proceeding, in my opinion did not extend the reservation, or make it more complete than the correspondence of 1825 left it.

Fort Armstrong was evacuated by the troops on the 4th May, 1836, in pursuance of general orders No. 9, dated January 28, 1836. Afterwards some of the dilapidated log buildings were sold, and the "remainder, together with the island, were then (in 1836) placed in charge of an agent of the War Department, and have so continued up to the present date, as I am advised by a letter of the Secretary of War, of December 28th, 1858.

I would remark, however, that Secretary Poinsett, on the 8th November, 1838, addressed a letter to the Commissioner of the General Land Office, from which I make the following quotations:—"It is at present deemed advisable not to dispose of it, (the reservation,) and this Department will, till it be otherwise determined, still hold it under its control; when it shall no longer desire to continue this control, it will be surrendered to the jurisdiction of the General Land Office, to be disposed of according to law, as in view of the construction put upon the Act of March 3, 1819, it cannot be sold under that Act by this Department. Under the circumstances, it is left to the General Land Office, to take such measures for the survey of the reservation, as it may deem proper and required by existing law."

"Instructions have been given to the Marshal of the district of Illinois, for the removal of intruders as directed by the President."

On the 11th February, 1848, Secretary Marcy addressed a letter to the Secretary of the Treasury, saying, "The Department has heretofore (on the

30th December last,) reported in answer to a resolution of the Senate, that the site is no longer required for military purposes, and it is therefore hereby relinquished, and placed at the disposal of the Department which has charge of the public lands."

Notwithstanding these communications of the War Department last quoted, the Department in charge of the public lands has never taken any action for the sale of the reservation of Rock Island, under the general laws regulating disposals of the public lands. On the contrary, it is understood that the Department of War has, at various dates since 1848, taken measures with a view of selling this reservation, under provisions of the Act of Congress of March 3, 1857, (No. 315.) (See Stats. at Large, vol. 3, p. 520, and vol. 11, p. 203.) These measures were not however carried out.

Under date of the 29th May last, the Secretary of War informed me that he had "postponed the sale of the military reserve at Rock Island, in order that the question of the rights of pre-emption in those lands, now claimed by sundry individuals, may be passed on in the ordinary course of proceedings in this Department." Soon after this, "all laws authorizing the sale of military sites, (excepting the provisions of the Act of August 18, 1856, relative to certain reservations in Florida,) were repealed, and it was declared, that "said lands shall not be subject to sale or pre-emption under any of the laws of the United States."

The policy of the War Department in taking measures for the sale of the Rock Island military reservation after it had become useless as a military site, and that of the Department in charge of the public lands, in declining any action, except to survey the island, has been in accordance with the Executive policy in other similar cases, and was, in my opinion, warranted by a sound construction of the laws then in force.

Lands which have once been reserved as military sites, or for military purposes, have been regarded as severed from the mass of the public lands, and thereby withdrawn from the control of the Commissioner of the General Land Office, and the legislative power has not provided any law, or prescribed any conditions according to which such lands can be relinquished, and placed again at the disposal of the land Department.

Congress has, however, since the Act of March 3, 1819, was passed, repeatedly, by special laws, authorized the sale of particular tracts, through the instrumentality of the General Land Office, thus sustaining and sanctioning the policy of the executive branch of the Government, on this subject.

My conclusion, therefore, in reply to the inquiry, whether the military reservation of Rock Island, has been transferred by the War Department to the Interior Department, is that it has not been so transferred.

As responsive to the inquiry, whether said reservation has been trespassed upon by persons claiming pre-emption rights, I have the honor to state, that at one time Col. George Davenport claimed the southeast fractional quarter of section 25, township 18 north, of range 2, west, but his claim was declared void by the General Land Office. Congress, however, by private Act, for his relief, authorized him to enter the land at \$1 25 per acre, and to have a patent issued therefor. (Stats. at Large, vol. 6, p. 908.)

In August, 1838, Lewis C. Underwood, sought to enter the northwest fractional quarter of section 31, township 18 north, range 1, west. His claim was allowed for the south portion of the quarter section, which was situated on the south bank of the river, but was rejected for the north part, being forty-nine and ninety-one hundredths acres, lying upon the Island, across the narrow channel separating the Island from the south bank of the Mississippi river at that point.

Montgomery Blair, Esq., has recently advised the Commissioner of the General Land Office, that he appears as attorney for J. H. Langley, Henry W. Chamberlin, Jas. Lackey, W. O. B. Shelton, Jesse H. Kennedy, Cyrus Conchling, Henry W. Adams, and Benj. C. C. Smith, claiming the right of pre-emption, in virtue of settlements made in April and May, 1857. He states that his clients appeared at the Land Office at Springfield, Illinois, on the 7th April, 1858, and that the Register and Receiver refused to hear proof of their rights, because the Secretary of War had advertised the lands for sale as a military reserve.

The above mentioned, are believed to be the only claims to the right of pre-emption in this Island of which the records of the Department furnish information.

In reply to the concluding inquiry of the resolution, I would respectfully state, that no decision has ever been made by this Department, in favor of persons claiming pre-emption rights in the lands on Rock Island. Such claims have been rejected by the General Land Office heretofore.

My predecessor, on the 31st January, 1855, in a letter to the President of the Mississippi and Missouri Railroad company, expressed the opinion that "the disposition of the public land on Rock Island, is entirely within the control of the War Department." I have no hesitancy in saying that I concur in that opinion, and that the sale of Rock Island, after it had become useless as a military site, was exclusively under the direction and jurisdiction of the Department of War, until the laws authorizing its sale were repealed in 1858.

Since then, it has not been subject to sale or pre-emption, under any of the laws of the United States.

I have the honor to be,

Very respectfully,

Your obedient servant,

J. THOMPSON, Secretary.

No. 699.

A party in the case given, has no right to use the name of the United States in a suit, without special authority.

ATTORNEY-GENERAL'S OFFICE,
July 28, 1859.

Sir:—Mr. Murray McConnel, claims title to six and fifty-eight hundredths (6 58-100) acres of land, which lies within the City of Chicago. For this land he had a certificate of purchase, dated June 1, 1836, with an endorsement upon it of a previous entry by Robert A. Kinzie, on the 7th May, 1831. On the 20th August, 1836, the land office cancelled the certificate in favor of McConnell, and on the 9th March, 1837, a patent was issued for it to Kinzie. On the 23d June, 1857, more than twenty years after the rights of the respective parties had been settled by the proper Department of the Government, and after the property had increased in value from \$8 66, to several millions, Mr. McConnel opened the dispute again, by applying for a patent. This was refused by the land office, and the refusal was affirmed by the Secretary of the Interior, upon appeal. Since that time Mr. McConnel has brought ejectment in the name of the United States, in the Circuit Court, for the northern District of Illinois, against the persons in possession, who claim under Kinzie, and I am asked to sanction that proceeding on the part of the Government.

I think that the subject was properly disposed of in 1836, when M'Connel's certificate was cancelled, and the purchase-money ordered to be refunded. Most assuredly the Department of the Interior was right in refusing to open the case, and rejudge the justice, which had been administered to the parties so long ago. If a man will lie by, while a whole generation is passing away, until it is probable that the witnesses of his adversary are dead, and his papers destroyed, he must expect his claim to be treated in the Executive Departments of the Government, as it would be in the courts of law and equity, with every mark of extreme dislike.

But even if the decision of the Interior Department had not been manifestly correct, it would still be my duty to take the legal justice of it for granted. It is conclusively presumed to be right. I have no authority to overturn or even to impugn a judgment pronounced by one of the other Executive Departments, to whom jurisdiction over the subject has been given by law. I will not, under any circumstances, consent that this Office shall directly or indirectly sustain an appeal to the judiciary with the object of reversing a decision made by the Secretary of the Interior; especially when I believe that decision to be perfectly just. Of course, we desire to throw no impediment in the way of a private party who alleges that he is wronged. But if he has suffered any injury which the judiciary are competent to correct, he certainly has a right to demand the remedy in his own name. So far as the United States are concerned, the question must be considered as settled, and the government can have no hand in any further proceeding about it.

If Mr. M'Connel has a right without special authority, to bring this action, then the Circuit Court will say so, and permit him to proceed. If he has no right without special authority, then he cannot acquire it by any action of this Office. I am of opinion that he has no such right.

Mr. M'Connel has addressed me an argument in favor of his right to the approval of his proceeding by this Office, and he has cited numerous authorities, by none of which do I think he is sustained.

It will be your duty to appear for the United States, in this cause, and ask that it be discontinued. If the court refuses leave to enter a discontinuance, have the record put into such a shape as will enable you, in case of future necessity, to have the advantage of a writ of error.

I am, very respectfully, yours, &c.,

J. S. BLACK.

Henry S. Fitch, Esq.,

United States Attorney, Chicago, Illinois.

No. 700.

Lapse of time will not be considered as a bar to the cancellation of an erroneous entry.

DEPARTMENT OF THE INTERIOR,
Washington, August 2, 1859.

Sir:—Herewith I return the papers which were submitted with your report of the 25th January last, in the contested pre-emption case of Deyo and Reese, Nebraska City District, which has been reinvestigated, pursuant to the directions of this Office, of the 12th July, 1858. The local officers, and the General Land Office, have decided in favor of the right of Abraham Deyo, to the entry by pre-emption of the northwest quarter of section 17, township 11, range 14, and on a review of the case on appeal, I concur in the decision of your office, and hereby affirm the same.

Beyond the merits of the case, the attorney for Mrs. Reese suggests lapse of time since her entry, as an objection to its cancellation. The reply to this is, that her entry was effected whilst the appeal of Deyo, from the first decision of the local officers in favor of the right of Mrs. Reese, was pending and undecided. Deyo has maintained a pertinacious conflict in support of his claim, from the commencement, and having finally established the better right to the land, lapse of time, after the admission of the entry of Reese, is no objection to a cancellation. The obtaining the entry at the time and under the circumstances which it is now shown existed at the time, is rather an additional badge of fraud in her claim.

J. THOMPSON, Secretary.

Commissioner of the General Land Office.

No. 701.

Circular to Registers and Receivers of the United States Land Offices in California.

GENERAL LAND OFFICE,
October 12, 1853.

Gentlemen:—Annexed is a copy of that portion of the act of Congress, approved 3d March, 1853, (No. 224,) entitled "An act to provide for the survey of the public lands in California, the granting of pre-emption rights therein, and for other purposes;" which has relation to the subject of pre-emptions.

The 6th section of the said act subjects the public lands in the State of California, (with certain exceptions therein mentioned,) to the provisions of the pre-emption law of 4th September, 1841, and by consequence to the several supplementary acts of 3d March, 1843, 8th May, 1846, and of 3d March, 1853, chapter 143.

Your attention is directed to the requirements of these laws, and your observance enjoined of the rules hereinafter stated.

Settlements on public lands in your State, *not yet surveyed*, are authorized, *if made within one year from the passage of the said act*; but will not be recognized if made after the expiration of that period; and if any such settlement should prove, (after the return of the plat,) to be upon the "sixteenth" or "thirty-sixth" section reserved for schools, such settlement right will attach, and other school lands must be selected in lieu of the tract thus settled and claimed.

By the act of 3d March, 1853, chap. 143, settlers on lands "reserved on account of claims under French, Spanish, or other grants," "which have been or shall be hereafter declared by the Supreme Court of the United States, to be invalid," will be entitled to the right of pre-emption, "after the lands shall have been released from reservation, in the same manner as if no reservation existed."

The individual claiming the benefit of these acts, must be:

1st. A citizen of the United States, or one who has filed his declaration of intention to become a citizen at the time of the settlement upon which his claim is based.

2d. Either the head of a family, or a widow, or a single man over the age of twenty-one years.

3d. An inhabitant of the tract sought to be entered, upon which, in person, he has made a settlement, and erected a dwelling-house since the acquisition of title by the United States, and prior to 3d March, 1854, in

reference to *unsurveyed* lands, and before the time when the land is applied for, in other cases.

A person bringing himself within each of the foregoing requirements, by proof satisfactory to the Register and Receiver of the land district in which the lands may lie, taken pursuant to the rules hereinafter prescribed, will, after having taken the affidavit required by the act, be entitled to enter by legal subdivisions any number of acres not exceeding one hundred and sixty, or a quarter section, to include his residence, and he may avail himself of the same at any time prior to the day of commencement of the public sale, including said tract; and your attention is here called to the fact, that payment may be made for pre-emption claims, whether on offered or unoffered lands by military bounty land warrants, reckoning the said warrant at \$1 25 per acre for the quantity therein specified, whether the land so claimed is at the usual or enhanced minimum. Should the area of the tract claimed exceed the amount called for in the warrant, or the land located be at a greater minimum than \$1 25 per acre, then the difference must be paid in cash. (But one warrant can be used in each pre-emption case.)*

All settlers under this act are required to file with the proper Register declaratory statements, or notices in writing of their claims, specifying therein the precise day of settlement; those on *unsurveyed* land, within three months after the filing of the township plat in said Register's office; those on lands *surveyed at the passage of the Act of 3d March, 1853*, within three months after the date thereof; those on land *surveyed at date of settlement*, but which has never been offered at public sale, within three months after such settlement, and those on land which shall hereafter become *subject to private entry*, by having been offered at public sale, within thirty days after the settlement.

In the first three classes of cases, the proof, affidavit, and payment are to be made at any time before the day fixed by the President's proclamation for the commencement of the public sale, including the tract claimed; and in the fourth and last class, the said proof, affidavit, and payment are to be made within twelve months after settlement. [See forms for said declarations hereto appended, marked A. and B.]

These declaratory statements are to be regularly numbered by the Register in the order of the date of their reception, and entered in suitable books, columned off to show the number, date when received, name of the party, and description of the tract claimed, and a monthly abstract of *each* class is to be furnished to the General Land Office with your other monthly returns.

The existence of these claims should be indicated on the township plats, by marking with *red ink* a cross ✕ on the spot occupied by the tract claimed; and also with red ink, noting on the same spot the number of the declaratory statement in neat and very small *figures*, so as not too much to interfere with the regular annotations which will be necessary when the regular proof and payment shall have been made by the claimant, and his entry of the tract consummated. The existence of such claims should also be noted *in pencil* in their appropriate places in the *tract books*. Particular care must be taken not to confound the two species of declarations, but to keep separate files thereof, enter them in the respective books prepared for each, and in the monthly abstracts transmitted to this Office, dis-

* Obsolete. See 6th art. of Bounty Land Circular of 1st November, 1858. Two or more may be used, but each must be located on a specific tract, for which separate patents will issue.

criminate between the two by heading the one "for land not yet offered for sale," and the other "for land subject to private entry."

The tracts liable to entry under this Act, are, *a regular quarter section*, notwithstanding its quantity may be a few acres more or less than one hundred and sixty acres; *any lesser legal subdivision*, or *any adjoining legal subdivisions*, the aggregate number of acres in which does not exceed one hundred and sixty.

The *second* section of the Act of 3d March, 1843, provides for the rights of parties who shall have died before consummating their claims, by the filing in due time of all the papers essential to establish the same. Under it you are authorized, if proof of such right shall be filed, and payment therefor be made by the executor, administrator, or one of the heirs during the period prescribed by the law upon which the claim is founded, to permit the entry in the name of "the heirs" of the deceased claimant. A patent on such an entry will cause the title to enure to said heirs, as if their names had been specially mentioned. In cases of this kind the affidavits required of the pre-emptor will be taken by the person so filing the proof; and should such person be one of the heirs, he or she should be of age and mind competent to appreciate the nature and obligation of an oath. [A form for such an affidavit is hereto annexed, marked C.]

The *fourth* section of the same Act declares it unlawful for an individual who has once filed a declaration for one tract of land, to file at any future time a second declaration for another tract. This has reference to those required under the 15th section of the Act of 1841, for land subject at the time of settlement to entry at *private sale*. Your record of such declarations hereafter will afford you some means of detecting a violation of this provision, and whenever you do detect it by any means whatever, you are to refuse to receive or notice the same; and if such declaration shall have been received and reported to this Office before the discovery is made, such fact will not prevent your regarding the land as subject to the entry of the first applicant, in the same manner as if no declaration had been filed.

By the *sixth* section of the same Act, provision is made for the benefit of claimants whose rights may otherwise be jeopardized by reason of a vacancy which has occurred, or may hereafter occur, in either of your offices, or both. By it a claimant is authorized hereafter to file a declaration, or to make an entry of a claim, although the time prescribed by law for the filing of such declaration, or the making of such entry, shall have expired, provided the claimant was prevented by such vacancy from performing said act or acts within such time, and shall perform the duties required by the law within the *same period*, after the disability is removed, as he would have had if such vacancy had not occurred.

Only one person on a quarter section is protected by this law, and that is the one who made the *first settlement*, provided he shall have conformed to the other provisions of the law.

No person who is the proprietor of *three hundred and twenty acres* of land in any State or Territory of the United States is entitled to the benefits of this Act.

No person who shall *quit* or *abandon his residence* on his *own land* in California, to reside on the public land, is entitled to the benefits of this Act.

No *assignments* or *transfers* of pre-emption rights can be recognized of entries made with *cash* or *revolutionary land scrip*. The patents must issue to the claimants, in whose names all such entries must be made; but where the claim has been located by a *military warrant*, (made assign-

able per Act of Congress, approved March 22, 1852,) the certificate of location may be assigned, and the patent will be issued to such assignee.)*

The following descriptions of land are exempted from the operations of this Act; a greater portion by the terms of the Act of 4th September, 1841; the others by express provisions of said Act of 3d March, 1853, first herein referred to.

1st. Lands included in any reservation by any treaty, law, or proclamation of the President of the United States, and lands reserved for salines or other purposes.

2d. Lands reserved for the support of schools, except as to sections sixteen and thirty-six on *unsurveyed* land as hereinbefore mentioned.

3d. Any Indian reservation to which the title has been, or may be extinguished by the United States at any time during the operation of this Act.

4th. Sections of land reserved to the United States, alternate to other sections, which may hereafter be granted to the State for the construction of any canal, railroad, or other public improvement, except where the settlements may be made on such land between the time of reservation and the final allotment referred to in Act of 3d March, 1853, chap. 143, 2d sess. 32d Congress.

5th. Sections or fractions of sections included within the limits of any incorporated town.

6th. Every portion of the public lands which has been selected as a site for a city or town.

7th. Every parcel or lot of land actually settled and occupied for the purposes of trade, and not agriculture.

8th. All lands on which are situated any known salines or mines.

9th. Land reserved by competent authority and those claimed under any foreign grant or title.

10th. Lands in the occupation or possession of an Indian tribe.

11th. Lands selected for a military post or within one mile of such post.

Persons claiming the benefits of this Act, are required to file duplicate affidavits, such as the law requires, and to furnish proof by one or more disinterested witnesses, to your entire satisfaction, of the facts necessary to establish the three requisites pointed out in the commencement of these instructions.

The witnesses are to be first duly sworn or affirmed to speak the truth, and the whole truth, touching the subject of inquiry, by some officer competent to administer oaths and affirmations; and, if not too inconvenient, by reason of distance of residence from your office, or other good cause, must be examined by you, and the testimony reduced to writing in your presence, and signed by each witness, and certified by the officer administering the oath or affirmation, who must also join you in certifying as to the respectability and credit of each witness.

In case adverse claims shall be made to the same tract, each claimant must be notified of the time and place of taking testimony, and allowed the privilege of cross-examining the opposite witnesses, and of producing counter-proof, which should also be subject to cross-examination.

When, by reason of distance, sickness, or infirmity, the witnesses cannot come before you, you are authorized to receive their depositions; which must be, in all other respects, conformable to the within regulations.

The notice to adverse claimants should be in writing, and should be served in time to allow at least a day for every twenty miles the party may

* Obsolete. See Circular 23d May, 1856, (No. 616.)

have to travel, in going to the place of taking evidence. The proof, in all cases, should consist of a simple detail of facts merely, and not of statements in broad or general terms, involving conclusions of law. It is your exclusive province to determine the legal conclusions arising from the facts. For instance, a witness should not be permitted to state that a claimant is the "head of a family," &c., following the words of the law, but should set forth the facts on which he grounds such allegation; because such a mode of testifying substitutes the judgment of the witness for yours, and allows him not only to determine the facts, but the law. A witness may possibly conscientiously testify that a minor son living with a widowed mother, was the head of the family; and, in another case, similar in point of fact, another witness, equally conscientious, might testify that the widowed mother was the head of the family. There cannot be a uniform construction given to the law, if it is carelessly left to the opinion of every witness. You are therefore instructed not to receive as testimony or proof, a general statement, which embodies, in general terms, the conclusions of law, without stating the facts specifically.

The witnesses must state, if the pre-emptor be the "head of a family," the facts which constitute him such, whether a husband having a wife and children, or a widower, or an unmarried person under twenty-one years of age, having a family, either of relatives or others depending upon him, or hired persons, &c.

All the facts respecting the settlement in person, inhabitancy, or personal residence, *the time of commencement*, the manner and extent of continuance, as well as those showing the apparent objects, should be stated.

It must be stated, that the claimant made the settlement on the land in person; that he has erected a dwelling upon the land;* that the claimant lived in it, and made it his home, &c. By this means, you will be enabled to determine whether or not the requisites of the law have been complied with in any given case. Should you decide against a claimant, who, feeling dissatisfied with such decision, may request, in writing, the opinion of this Office thereon, you will forthwith forward all the original papers touching said claim, and a brief report of your reasons for rejecting it; and, in the mean time, will not permit the land claimed to be entered or sold without an order from the Department.

The affidavit of the claimant in reference to the *fact of settlement*, &c., should not be received. It is, in no case, legal evidence on these points, and therefore should not form a part of the proof in reference thereto. The *only* affidavit required of the claimant is that prescribed by the thirteenth section of the Act of 4th September, 1841, which is to be taken before the *Register* or *Receiver*, and cannot be received if taken before any other person. (See form D, hereunto annexed.)

No entry must be permitted until this affidavit is taken. Duplicates thereof must be signed by the claimant, and the fact of the oath being taken must be certified by the Register or Receiver administering it, one copy to be filed in your office, and the other to be transmitted to this Office. Each entry made, by virtue of this act, must be designated by marking on the margin of your quarterly accounts and monthly abstracts, opposite to the tract, the abbreviation "*Pre'n 1853*," and on the face of the receipt and of the certificate, "*Pre-emption Act of 1853*."

You will give the No. 1 to the first entry permitted, and continue sub-

* Modified; a dwelling-house erected prior to a pre-emptor's settlement will answer the legal requirement.

sequently unbroken the regular series of numbers for receipts and certificates, whether they are pre-emption entries, or entries at private sale, which will hereafter necessarily be made after the land in your district shall have been offered at public sale. The original proof, affidavit, and receipt, must be filed with the certificate of purchase, in each case; *each paper being appropriately endorsed*, and transmitted to this Office, with your monthly abstract, which must contain and show the aggregate of lands sold, and the purchase-money, at the foot of the abstract. Also, a separate aggregate of the lands sold, and the purchase-money, under the Pre-emption Act, by virtue of which any entries in that month may be made. No excuse can be allowed for negligence in observing this direction.

The forms for applications, receipts, and certificates, will be the same as those used for private entries.

Very respectfully, gentlemen,

Your obedient servant,

JOHN WILSON, Commissioner.

The Register of the Land Office,
and Receiver of public moneys,
Land Office at ———.

FORM A.

Declaratory statement for cases where the land has not been offered at public sale.

I, A. B., of ———, being [the head of a family, or widow, or single man, over the age of twenty-one years, as the case may be, a citizen of the United States, or having filed my declaration to become a citizen, as required by the naturalization laws, as the case may be,] have on the ——— day of ———, A. D. 18—, settled and improved the ——— quarter of section number ———, in township number ———, of range number ———, in the district of lands subject to sale at the land office at ———, and containing ——— acres, *which land has not yet been offered at public sale, and thus rendered subject to private entry*; and I do hereby declare my intention to claim the said tract of land as a pre-emption right, under the provisions of the Act of 3d March, 1853.

Given under my hand, this ——— day of ———, A. D. 18—.

(Signed)

A. B.

In presence of C. D.

FORM B.

Declaratory statement for cases where the land shall have been offered at public sale.

I, A. B., of ———, being [the head of a family, or widow, or single man over the age of twenty-one years, as the case may be, a citizen of the United States, or having filed my declaration to become a citizen as required by the naturalization laws, as the case may be,] have, since the first day of ———, A. D. 18—, settled and improved the ——— quarter of section number ———, in township number ——— of range number ———, in the district of lands subject to sale at the land office at ———, and containing ——— acres, *which land has been rendered subject to private entry since the passage of the Act of 3d March, 1853, but prior to my settlement thereon*; and I do hereby declare my intention to claim the said tract of land as a pre-emption right, under the provisions of said act.

Given under my hand, this ——— day of ———, A. D. 18—.

(Signed)

A. B.

In presence of C. D.

FORM C.

Affidavit to be filed in cases, under Act of 3d March, 1853, where the settler shall have died before proving up and entering his claim.

I, A. B., [executor of the estate of C. D., or administrator of the estate of C. D., or, one of the heirs of C. D., aged _____ years, as the case may be,] do solemnly swear, [or affirm, as the case may be,] that, to the best of my knowledge and belief, the said C. D., who was a settler on the _____ quarter of section number _____, of township number _____, of range number _____, subject to sale at _____, was not, at the time of his death, the owner of three hundred and twenty acres of land in any State or territory of the United States; that he did not settle upon and improve the above tract of land on speculation, but in good faith to appropriate it to his own exclusive use and benefit; and that he has not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which he might have acquired from the Government of the United States should enure, in whole or in part, to the benefit of any person except himself.

(Signed) A. B., executor, [or administrator,
or one of the heirs of C. D.,
as the case may be.]

I, E. F., Register, [or G. H., Receiver,] of the land office at _____, do hereby certify that the above affidavit was taken and subscribed before me, this _____ day of _____, A. D. 18—.

(Signed) E. F., Register or
G. H., Receiver.

FORM D.

Affidavit required of Pre-emption Claimant.

I, A. B., claiming the right of pre-emption under the provisions of the act of Congress, approved 3d March, 1853, to the _____ quarter of section number _____, of township number _____, of range number _____, subject to sale at _____, do solemnly swear, [or affirm, as the case may be,] that I am not the owner of three hundred and twenty acres of land in any State or Territory of the United States, nor have I settled upon and improved said land to sell the same on speculation, but in good faith to appropriate it to my own exclusive use or benefit; and that I have not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which I may acquire from the Government of the United States should enure in whole or in part, to the benefit of any person except myself.

(Signed) A. B.

I, C. D., Register [or E. F., Receiver] of the land office at _____, do hereby certify, that the above affidavit was taken and subscribed before me, this _____ day of _____, A. D. 18—.

(Signed) C. D., Register, or
E. F., Receiver.

Brief relative to Assignments of Pre-emption Rights.

The meaning of the clause in the thirteenth section of the Act of 1841, which provides, "That any *grant* or *conveyance* which he or she may have made, except in the hands of *bona fide* purchasers, for a valuable consideration, shall be null and void," appears to be this:—

That where a pre-emptor claims, and represents to another party that he owns the land absolutely, and makes a sale to him, conveying the title thereto, by deed or other instrument of writing, and afterwards a patent issues to the pre-emptor, who then claims, or whose heirs claim the land, in such a case, upon suit being brought, the vendee may plead that he was a *bona fide* purchaser, for a valuable consideration, and he would be entitled to the full benefit of that plea in the courts. Whether that plea would avail under a mere *equitable* title, would be for the courts to decide.

The clause in the twelfth section, of similar import, but of apparent conflict, reads as follows:—

"And all *assignments* and transfers of the right hereby secured, prior to the issuing of the patent, shall be null and void."

This clause is intended to prevent *transfers* or *assignments* of the *right* of pre-emption. In the other clause, the terms employed are *grants* and *conveyances*.

The prohibition in the former is *plain* and *positive*. It is, too, in perfect consonance with the pre-emption system. The object is to enable persons to acquire homesteads, not to afford opportunities for speculation.

It has been held by the Supreme Court, (in case of *Faw v. Marsteller*, 1 Cond. Reps. 337,) that "in the construction of a statute, positive and explicit provisions, comprehending in terms a whole class of cases, are not to be restrained by applying to those cases an implication drawn from subsequent words, unless that implication be very clear, necessary, and *irresistible*." (See also, case of *United States v. Fisher et al.*, 1 Cond. Reps. 421.) "If, from a view of the whole law, the evident intention is different from the literal import of the terms employed to express it in a particular part of the law, that intention should prevail."

The manifest intention of the Act of 1841, is to prohibit assignments of the rights of pre-emption.

In cases where pre-emptors grant or convey the lands by deed, *bona fide* purchasers are protected against the subsequent claims of the pre-emptor or his heirs, by the thirteenth section clause.

If, however, a purchaser does not take a deed, but accepts a simple assignment of the certificate of purchase, he would not be protected against the pre-emptor or his heirs. He would be presumed to know the law under which the certificate was issued, and he could not therefore be a *bona fide* purchaser, being cognizant of the inability of the pre-emptor to assign.

The clause relating to *grants* and *conveyances* does not qualify change, or affect the clause respecting *transfers* and *assignments*.

It is therefore considered, that an assignee of a pre-emption right acquires no title whatever, and no rights that should be respected or protected.

Respectfully submitted,

W. W. LESTER.

October 3, 1857.

TITLE XVII.

Survey of Public Lands.

No. 702.

*System of Rectangular Surveying.**

1. The public lands of the United States are ordinarily surveyed into rectangular tracts, bounded by lines conforming to the cardinal points.
2. The public lands are laid off, in the first place, into bodies of land of

* *To the Surveyors-General of public lands of the United States, for the surveying districts established in and since the year 1850.*

GENERAL LAND OFFICE,
February 22, 1855.

By the direction of the Commissioner of the General Land Office, the accompanying instructions are prescribed for your official government, including a Manual of Instructions to regulate the field operations of your deputy-surveyors. The latter is a revision of the Manual of Surveying Instructions prepared for Oregon in 1851, (the edition of which is now exhausted,) and presents, in some respects, more copious illustrations, both in the specimen field notes and in the diagrams, than could be furnished amidst the pressure of the exigency under which the former had to be prepared. It will be observed that, in the former edition, the township and section lines south of the base are made to start therefrom, and close on the first standard parallel south; whereas, under the present instructions, such lines are made to start from the first standard parallel south, and to close to the north on the base: and thus there will be closing corners and starting corners, both on the base and standard lines. Such modification is introduced for the sake of entire uniformity of method in new fields of survey, and will not, of course, affect any past operations under the original instructions.

The starting corners on the base line and on the standards will, of course, be common to two townships, or to two sections lying on and north of such lines; and the closing corners on such lines, from the south, should be carefully connected with the former by measurements to be noted in the field book.

Where stone can be had to perpetuate corner boundaries, such, for obvious reasons, should always be preferred for that purpose, and the dimensions of the stone, as herein prescribed, (page 711,) are to be regarded as the *minimum size*; but in localities where it is found practicable to obtain a stone of *increased dimensions*, it is always desirable to do so, particularly for *township corners*, and especially for those on base, meridian, and standard lines; and to such purport the deputy-surveyor is to be specially instructed.

Prior to entering upon duty, the deputy-surveyor is to make himself thoroughly acquainted with the official requirements in regard to field operations in all the details herein set forth, and to be apprized of the weighty moral and legal responsibilities under which he will act.

Unfaithfulness in the execution of the public surveys will be detected by special examinations of the work to be made for that purpose, and, when detected, will immediately subject the delinquent deputy and his bondsmen to be sued by the district attorney of the United States, at the instance of the proper Surveyor-General, the institution of which suit will act at once as a lien upon any property owned by him or them at that time; and such delinquency, moreover, is an offence punishable by the statute, with all the pains and penalties of perjury, (see Act of 1846, quoted on pages 718 and 719,) and will of necessity debar the offending deputy from future employment in like capacity. Hence, in the execution of contracts for surveying public lands, there is every incentive to fidelity that can address itself either to the moral sense, or to motives of private interest.

By order of the Commissioner:

JOHN M. MOORE, Principal Clerk of Surveys.

six miles square, called *Townships*, containing as near as may be 23,040 acres. The townships are subdivided into thirty-six tracts called *Sections*, of a mile square, each containing as near as may be, six hundred and forty acres. Any number or series of contiguous townships, situate north or south of each other, constitute a *Ringe*.

The law requires that the lines of the public surveys shall be governed by the true meridian, and that the townships shall be *six miles square*,—two things involving in connection a mathematical impossibility—for, strictly to conform to the meridian, necessarily throws the township out of square, by reason of the convergency of meridians, and hence, by adhering to the true meridian, results the necessity of departing from the strict

Under the Act of April 24, 1820, Statutes at Large, vol. 3, p. 566, and the instructions issued under the same, the Surveyor-General was bound to divide fractional sections into as many half-quarter sections as practicable, by north and south, or east and west lines, so as to preserve the most compact forms; and if this be not done, the Register cannot legally sell the land, and the act of the Surveyor-General, in making a different division, is void.—*Brown's Lessee v. Clements*, 3 Howard, 650; 15 Condensed Reports, 580.

A patent which, by reason of such a void entry and division, appropriates to one pre-emption claim what belongs to another, is void as against the owner of the latter claim.—*Ib.*

Though natural objects capable of being identified, called for in a survey, will control courses and distances, yet, if the land is only described by courses and distances, and reference to objects not distinguishable from others of the same kind, then course and distance are the only guides, and must alone be used to designate the land granted.—*Chenoweth v. Haskell's Lessee*, 3 Peters, 92; 8 Cond. Reps. 301.

To support an entry, the objects called for in it must be so described or so notorious that others, by using reasonable diligence, could find them readily.—*Watts v. Lindsey's Heirs*, 7 Wheaton, 158; 5 Cond. Reps. 241.

Claimants are liable for the expenses of surveys of private land claims, only where there had been no survey of the claim under the French or Spanish governments, previous to the delivery of possession of the territory; and where surveys are deemed necessary by the commissioners to enable them to decide on the validity of the claims.—(Opinion of Attorney-General, April 8, 1824, vol. 1, p. 655.)

The Act of April 24, 1820, and the instructions issued under it, directing the manner of subdividing fractional sections containing over one hundred and sixty acres, did not require the absolute platting of every quarter or half-quarter of which the section was susceptible; but contemplated the exercise of discretion so as to prevent small and inconvenient fractions of a fractional section.—(Opinion, August 2, 1837, vol. 3, p. 281.)

It is the duty of the Surveyors-General to subdivide fractional sections in conformity to law, and without reference to the existence of the pre-emption Acts of May 29, 1830, and June 19, 1834.—*Ib.*

It is the duty of Surveyors-General to divide fractional sections containing over one hundred and sixty acres, into lots approaching as nearly as practicable to the form and quantity of half-quarter sections; and it is competent for the Department to direct the performance of the duty.—(Opinion, August 5, 1837, vol. 3, 284.)

The survey is to be made without reference to pre-emptions; but pre-emptors are entitled to a legal survey.—*Ib.*

The lines actually run upon the ground, by the original surveyor, become the true external boundaries of all lands sold by the government, if they can be ascertained by reference to the monuments erected upon the land by the surveyor.—*McClintock v. Rogers*, 11 Illinois, 279.

A survey made by an officer authorized by law, is *prima facie* evidence, and cannot be questioned by a mere trespasser.—*Trotter v. St. Louis Public Schools*, 9 Mo. Reps. 68.

requirements of law, as respects the precise area of townships and the subdivisional parts thereof, the township assuming something of a trapezoidal form, which inequality develops itself more and more as such, the higher the latitude of the surveys. It is doubtless in view of these circumstances that the law provides, (see sec. 2, of the Act of May 18, 1796,) that the sections of a mile square shall contain the quantity of six hundred and forty acres, *as nearly as may be*; and, moreover, provides, (see sec. 3, of the Act of 10th May, 1800,) in the following words: "And in all cases where the exterior lines of the townships, thus to be subdivided into sections or half sections, shall exceed, or shall not extend six miles, the excess or deficiency shall be specially noted, and added to or deducted from the western

The Surveyor-General of California, having returned a map, showing an anomalous subdivision to suit the location of a swamp, by a surveyed line, not conforming to the usual legal subdivisional lines, he was instructed on 14th instant, that this mode of subdivision is inadmissible, and the survey of such lines unauthorized; that the instructions of this Office require, when the smallest legal subdivision contains more of swamp or overflowed land, unfit for cultivation, than of arable land, it is to be taken as all swamp, and *vice versa*, that is, when there is more arable land in it than swamp, no part of it belongs to the swamp grant. To determine the fact in such case, it is only necessary, that the topography should show the out limits of the swamp or overflow, as near as can be designated, which determines how the land shall be classed.—(Report of Chief Clerk of the Land Office, November, 1855.)

Wolf Island in the Mississippi River in township 24 north, range 17 and 18, east, 5th p. meridian:—Question, as to whether it is an appendage of the State of Missouri or Kentucky?

Many years ago this island was surveyed and returned by the Surveyor-General as within the State of Missouri, and was regularly offered for sale in the year 1835. Private entries of the lands on the island were permitted until 1838, in which year the attention of this Office was called to it by a communication stating that the Legislature of Kentucky had passed a law directing its sale, as belonging to that State, and that the lands had been offered for sale by the State authorities, whereupon by instructions from this Office, all the unsold lands were immediately withdrawn from market, all the sales made up to that time suspended, and the Surveyor-General of Missouri called upon to institute careful examination on the spot, and report the facts to this Office, with a view to *determine the main channel of the river*, which, by the act of admission of Missouri, as a State, as well as the treaty of limits of 1783, with Great Britain, was made the boundary line between the States of Kentucky and Missouri.

A very particular examination and report were made by the Surveyor-General, and communicated to this Office on the 18th December, 1843, accompanied by a map showing cross sections of the two channels, *east and west* of the island, from *actual* measurements, and by affidavits of the oldest inhabitants and river men, all of which clearly show that the main channel of the river, both as to its breadth and depth, and the quantity of water passed per second (being nearly double) *runs on the east side* of the island, and has done so from the earliest time, and that consequently it belongs to the jurisdiction of Missouri, and not to Kentucky. It was, therefore, determined to restore the lands to market again, after three full months published advertisements, so as to afford ample notice to all parties concerned, whether on the Missouri or Kentucky side of the river, and at the expiration of that time, the unsold lands on the island will come under the general laws of the United States, for the sale and disposal of the public domain.—(Report of Chief Clerk of General Land Office for January, 1856.)

Lost corners in the surveys.

In a letter to Messrs. Levering Brothers, relative to lost corners in the surveys in Indiana, it was held, that the Government was not bound to keep up the marks in the field which have been obliterated or changed, by design, accident or time, more especially after the titles to the lands have passed from the United States; that it then becomes a matter of State jurisdiction, and of the courts to settle difficulties and disputes which may arise relative to boundaries, and the rules were laid down which govern this Office in making resurveys.—(Report of the Chief Clerk of the General Land Office for July, 1856.)

or northern ranges of sections or half sections in such township, according as the error may be in running the lines from east to west, or from south to north; the sections and half sections bounded on the northern and western lines of such townships shall be sold as containing only the quantity expressed in the returns and plats, respectively, and all others as containing the complete legal quantity."

The accompanying diagram, marked A, will serve to illustrate the method of running out the exterior lines of townships, as well on the *north* as on the *south* side of the base line; and the order and mode of subdividing townships will be found illustrated in the accompanying specimen field notes, conforming with the township diagram B. The method here presented is designed to insure as full a compliance with all the requirements, meaning, and intent of the surveying laws as, it is believed, is practicable.

The section lines are surveyed from *south* to north on true meridians, and from *east* to west, in order to throw the excesses or deficiencies in measurements on the north and west sides of the township, as required by law.

3. The townships are to bear numbers in respect to the base line either north or south of it; and the tiers of townships, called "Ranges," will bear numbers in respect to the meridian line according to their relative position to it, either on the east or west.

4. The thirty-six sections into which a township is subdivided, are numbered, commencing with number *one* at the *northeast* angle of the township, and proceeding west to number six, and thence proceeding east to number twelve, and so on, alternately, until the number thirty-six in the southeast angle.

5. *Standard Parallels*, (usually called correction lines,) are established at stated intervals to provide for or counteract the error that otherwise would result from the convergency of meridians, and also to arrest error arising from inaccuracies in measurements on meridian lines, which, however, must ever be studiously avoided. On the *north* of the principal base line, it is proposed to have these standards run at distances of every *four* townships, or twenty-four miles, and on the *south* of the principal base, at distances of every *five* townships, or thirty miles.

OF MEASUREMENTS, CHAINING, AND MARKING.*

1. Where uniformity in the variation of the needle is not found, the public surveys must be made with an instrument operating independently of the magnetic needle. Burt's *improved solar compass*, or other instrument of equal utility, must be used of necessity in such cases; and it is deemed best that such instrument should be used under all circumstances. Where the needle can be relied on, however, the ordinary compass may be used in subdividing and meandering.

2. The township lines, and the subdivision lines, will usually be measured by a two-pole chain of thirty-three feet in length, consisting of fifty links, and each link being seven inches and ninety-two hundredths of an inch long. On uniform and level ground, however, the four-pole chain may be used. Your measurements will, however, always be represented according to the four-pole chain of one hundred links. The deputy-surveyor must also have with him a measure of the standard chain, wherewith to compare and adjust the chain in use, from day to day, with punctuality and carefulness; and must return such standard chain to the Surveyor General's office for examination when his work is completed.

OF TALLY PINS.

3. You will use eleven tally pins made of steel, not exceeding fourteen inches in length, weighty enough towards the point to make them drop perpendicularly, and having a ring at the top, in which is to be fixed a piece of red cloth, or something else of conspicuous color, to make them readily seen when stuck in the ground.

PROCESS OF CHAINING.

4. In measuring lines with a two-pole chain, every *five* chains are called "a *tally*," because at that distance the last of the ten tally pins with which the forward chainman set out will have been stuck. He then cries "tally;" which cry is repeated by the other chainman, and each registers the distance by slipping a thimble, button, or ring of leather, or something of the kind, on a belt worn for that purposes, or by some other convenient method. The hind chainman then comes up, and having counted in the presence of his fellow the tally pins which he has taken up, so that both may be assured that none of the pins have been lost, he then takes the forward end of the chain, and proceeds to set the pins. Thus the chainmen alternately change places, each setting the pins that he has taken up, so that one is forward in all the odd, and the other in all the even tallies. Such procedure, it is believed, tends to insure accuracy in measurement, facilitates the recollection of the distances to objects on the line, and renders a mistake almost impossible.

LEVELLING THE CHAIN AND PLUMBING THE PINS.

5. The length of every line you run is to be ascertained by precise horizontal measurement, as nearly approximating to an air line as is possible in practice on the earth's surface. This all important object can only be attained by a rigid adherence to the three following observances:

1. Ever keeping the chain *stretched* to its utmost degree of tension on even ground.

2. On uneven ground, keeping the chain not only stretched as aforesaid, but horizontally *levell'd*. And when ascending and descending steep ground, hills, or mountains, the chain will have to be *shortened* to one-half its length, (and sometimes more,) in order accurately to obtain the true horizontal measure.

3. The careful plumbing of the tally pins, so as to attain precisely the *spot* where they should be stuck. The more uneven the surface, the greater the caution needed to set the pins.

MARKING LINES.

6. All lines on which are to be established the legal corner boundaries are to be marked after this method, viz: Those trees which may intercept your line must have two chops or notches cut on each side of them without any other marks whatever. These are called "*sight trees*," "*line trees*," or "*station trees*."

A sufficient number of other trees standing nearest to your line, on either side of it, are to be *blazed* on two sides diagonally, or quartering towards the line, in order to render the line conspicuous, and readily to be traced, the blazes to be opposite each other, coinciding in direction with the line where the trees stand very near it, and to approach nearer each other the further the line passes from the blazed trees. Due care must ever be taken to have the lines so well marked as to be readily followed.

ON TRIAL, OR RANDOM LINES,

The trees are not to be blazed, unless occasionally from indispensable necessity, and then it must be done so guardedly as to prevent the possibility of confounding the marks of the trial line with the *true*. But bushes and limbs of trees may be lopped, and *stakes set* on the trial, or random line, at every *ten* chains, to enable the surveyor on his return to follow and correct the trial line, and establish therefrom the *true line*. To prevent confusion, the temporary stakes set on the trial, or random lines, must be *pulled up* when the surveyor returns to establish the true line.

INSUPERABLE OBJECTS ON LINE—WITNESS POINTS.

7. Under circumstances where your course is obstructed by impassable obstacles, such as ponds, swamps, marshes, lakes, rivers, creeks, &c., you will prolong the line across such obstacles by taking the necessary right-angle offsets; or, if such be inconvenient, by a traverse or trigonometrical operation, until you regain the line on the opposite side. And in case a north and south, or a true east and west, line is regained in advance of any such obstacle, you will prolong and mark the line back to the obstacle so passed, and state all the particulars in relation thereto in your field book. And at the intersection of lines with both margins of impassable obstacles, you will establish a *Witness Point*, (for the purpose of perpetuating the intersections therewith,) by setting a post, and giving in your field book the course and distance therefrom to two trees on opposite sides of the line, each of which trees you will mark with a blaze and notch facing the post; but on the margins of navigable water-courses, or navigable lakes, you will mark the trees with the proper number of the fractional section, township, and range.

 The best marking tools adapted to the purpose must be provided for marking neatly and *distinctly* all the letters and figures required to be made at corners; and the deputy is to have always at hand the necessary implements for keeping his marking irons in order; for which purpose a rat-tail file and a small whetstone will be found indispensable.

ESTABLISHING CORNER BOUNDARIES.

To procure the faithful execution of this portion of a surveyor's duty is a matter of the utmost importance. After a true coursing, and most exact measurements, the corner boundary is the consummation of the work, for which all the previous pains and expenditures have been incurred. If, therefore, the corner boundary be not perpetuated in a permanent and workmanlike manner, the *great aim* of the surveying service will not have been attained. A boundary corner, in a timbered country, is to be *a tree*, if one be found at the precise spot; and if not, *a post* is to be planted thereat; and the position of the corner post is to be indicated by trees adjacent, the angular bearings and distances of which from the corner are facts to be ascertained and registered in your field book. (See article, "Bearing Trees.")

In a region where stone abounds, the corner boundary will be a small *monument of stones* alongside of a single marked stone for a township corner, and a single stone for all other corners.

In a region where timber is not near, and stone not found, the corner will be a *mound of earth*, of prescribed size, varying to suit the case.

The following are the different points for perpetuating corners, viz :

1. For township boundaries, at intervals of every six miles.
2. For section boundaries, at intervals of every mile, or 80 chains.
3. For quarter section boundaries, at intervals of every half mile, or 40 chains. Exceptions, however, occur on east and west lines, as explained hereafter.

[The half quarter section boundary is not marked in the field, but is regarded by the law as a point intermediate between the half mile or quarter section corners. See Act of 24th April, 1820, entitled "An Act making further provision for the sale of the public lands," which Act refers to the Act of Congress passed on the 11th of February, 1805, entitled "An Act concerning the mode of surveying the public lands of the United States," for the manner of ascertaining the corners and contents of half quarter sections.]*

4. *Meander Corner Posts* are planted at all those points where the township or section lines intersect the banks of such rivers, bayous, lakes, or islands, as are by law directed to be meandered.

The courses and distances on meandered navigable streams govern the calculations wherefrom are ascertained the true areas of the tracts of land (sections, quarter sections, &c.) known to the law as *fractional*, and binding on such streams.

MANNER OF ESTABLISHING CORNERS BY MEANS OF POSTS.

Township, sectional, or mile corners, and quarter-sectional or half mile corners, will be perpetuated by planting a post at the place of the corner, to be formed of the most durable wood of the forest at hand.

The posts must be set in the earth by digging a hole to admit them *two feet* deep, and must be very securely rammed in with earth, and also with stone, if any be found at hand. The portion of the post which protrudes above the earth must be *squared* off sufficiently smooth to admit of receiving the marks thereon, to be made with appropriate marking irons, indicating what it stands for. Thus the sides of *township corner posts* should square at least *four inches*, (the post itself being *five inches* in diameter,) and must protrude *two feet* at least above the ground; the sides of *section corner posts* must square at least *three inches*, (the post itself being *four inches* in diameter,) and protrude *two feet* from the ground; and the *quarter section corner posts* and *meander corner posts* must be *three inches wide*, presenting *flattened* surfaces, and protruding *two feet* from the ground.

Where a township post is a corner common to *four* townships, it is to be set in the earth *diagonally*, thus :



On each surface of the post is to be marked the number of the particular township, and its range, which it *faces*. Thus, if the post be a common boundary to four townships—say *one* and *two*, south of the base line, of range *one*, west of the meridian; also to townships *one* and *two*, south

* The subdivision of the half-quarter section into quarter-quarter sections is authorized by "An Act supplementary to the several laws for the sale of the public lands," approved, April 5, 1832.

of the base line, of range *two*, west of the meridian, it is to be marked thus :

From N. to E.	$\left\{ \begin{array}{l} \text{R. } 1 \text{ W.} \\ \text{T. } 1 \text{ S.} \\ \text{S. } 31 \end{array} \right\}$	from E. to S.	$\left\{ \begin{array}{l} 1 \text{ W.} \\ 2 \text{ S.} \\ 6 \end{array} \right\}$
From N. to W.	$\left\{ \begin{array}{l} 2 \text{ W.} \\ 1 \text{ S.} \\ 36 \end{array} \right\}$	from W. to S.	$\left\{ \begin{array}{l} 2 \text{ W.} \\ 2 \text{ S.} \\ 1 \end{array} \right\}$

These marks are not only to be distinctly but *neatly* cut into the wood, at least the eighth of an inch deep ; and to make them yet more *conspicuous* to the eye of the anxious explorer, the deputy must apply to all of them a *streak* of *red chalk*.

Section or mile posts, being corners of sections, and where such are common to *four* sections, are to be set *diagonally* in the earth, (in the manner provided for township corner posts ;) and on each side of the squared surfaces, (made smooth as aforesaid, to receive the marks,) is to be marked the appropriate *number* of the particular one of the *four sections*, respectively, which such side *faces* ; also on one side thereof are to be *marked* the numbers of its *township* and *range* ; and to make such marks yet more *conspicuous*, in manner aforesaid, a streak of *red chalk* is to be applied.

In every township, subdivided into thirty-six sections, there are twenty-five interior section corners, each of which will be *common* to *four* sections.

A quarter section, or half-mile post, is to have no other mark on it than $\frac{1}{4}$ S., to indicate what it stands for.

NOTCHING CORNER POSTS.

Township corner posts, common to four townships, are to be notched with *six* notches on each of the four angles of the squared part set to the cardinal points.

All mile posts *on township lines* must have as many notches on them, on two opposite *angles* thereof, as they are miles distant from the township corners, respectively. Each of the posts at the corners of sections in the *interior* of a township must indicate, by a number of notches on each of its four corners directed to the cardinal points, the corresponding number of miles that it stands from the *outlines* of the township. The four sides of the post will indicate the number of the section they respectively *face*. Should a tree be found at the place of any corner, it will be marked and notched as aforesaid, and answer for the corner in lieu of a post, the kind of tree and its diameter being given in the field notes.

BEARING TREES.

The position of all corner posts, or corner trees, of whatever description, that may be established, is to be evidenced in the following manner, viz : From such post or tree the courses must be taken and the distances measured to two or more adjacent trees in opposite directions, as nearly as may be, and these are called "bearing trees." Such are to be distinguished by a large *smooth blaze*, with a *notch* at its lower end, facing the corner, and in the blaze is to be marked the number of the *range*, *township*, and *section* ; but at quarter section corners nothing but $\frac{1}{4}$ S. need be marked.

The letters B. T., (bearing tree,) are also to be marked upon a smaller blaze, directly under the large one, and as near the ground as practicable.

At all township corners, and at all section corners, on range or township lines, *four* bearing trees are to be marked in this manner, one in each of the adjoining sections.

At interior section corners *four* trees, one to stand within each of the four sections to which such corner is common, are to be marked in manner aforesaid, if such be found.

A tree supplying the place of a corner post is to be marked in the manner directed for posts; but if such tree should be a beach, or other *smooth bark* tree, the marks may be made in the *bark*, and the tree notched.

From quarter section and meander corners two bearing trees are to be marked, one within each of the adjoining sections.

Where the requisite number of "bearing trees" is not to be found at convenient and suitable distances, such as are found are to be marked as herein directed; but in all such cases of deficiency in the number of bearing trees, (unless, indeed, the boundary itself be *a tree*) a *quadrangular trench*, with sides of *five* feet, and with the angles to the cardinal points, must be spaded up outside the corner, as a centre, and the earth carefully thrown on the inside, so as to form a range of earth, which will become covered with grass, and present a small square elevation, which in after-time will serve to mark, unmistakably, the spot of the corner.

CORNER STONES.

Where it is deemed best to use stones for boundaries, in lieu of posts, you may, at *any* corner, insert endwise into the ground, to the depth of seven or eight inches, a stone, the number of cubic inches in which shall not be less than the number contained in a stone fourteen inches long, twelve inches wide, and three inches thick—equal to five hundred and four cubic inches—the edges of which must be set north and south, on north and south lines, and east and west, on east and west lines; the dimensions of each stone to be given in the field notes at the time of establishing the corner. The kind of stone should also be stated.

MARKING CORNER STONES.

Stones at township corners, common to four townships, must have *six* notches, cut with a pick or chisel on each edge or side towards the cardinal points; and where used as section corners on the range and township lines, or as section corners in the interior of a township, they will also be notched, to correspond with the directions given for notching posts similarly situated.

Posts or stones at township corners on the base and standard lines, and which are common to two townships on the north side thereof, will have *six* notches on each of the *west*, *north*, and *east* sides or edges; and where such stones or posts are set for corners to two townships *south* of the base or standard, *six* notches will be cut on each of the *west*, *south*, and *east* sides or edges.

Stones, when used for quarter-section corners, will have $\frac{1}{4}$ cut on them—on the west side on north and south lines, and on the north side on east and west lines.

MOUNDS.

Whenever bearing trees are not found, mounds of earth, or stone, are to be raised *around posts* on which the corners are to be marked in the manner

aforesaid. Wherever a mound of earth is adopted, the same will present a conical shape; but at its base, on the earth's surface, a *quadrangular trench* will be dug; by the "trench" (here meant) is to be understood a *spade deep* of earth thrown up from the four sides of the line, *outside* the trench, so as to form a *continuous elevation along its outer edge*. In mounds of earth, common to *four townships* or to *four sections*, they will present the *angles* of the quadrangular trench (*diagonally*) towards the cardinal points. In mounds, common only to *two townships* or *two sections*, the *sides* of the quadrangular trench will *face* the cardinal points. The sides of the quadrangular trench at the base of a township mound are to be *six feet*, the height of mound *three feet*.

At section, quarter-section, and meander corners, the sides of the quadrangular trench at base of mounds are to be *five feet*, and the conical height *two and a half feet*.

Prior to piling up the earth to construct a mound, there is to be dug a spadeful or two of earth from the corner boundary point, and in the cavity so formed is to be deposited a *marked stone*, or a portion of *charcoal*, (the quantity whereof is to be noted in the field book;) or in lieu of charcoal or marked stone, a *charred stake* is to be driven twelve inches down into such centre point: either of those will be a *witness* for the future, and whichever is adopted, the fact is to be noted in the field book.

When mounds are formed of *earth*, the spot from which the earth is taken is called the "*pit*," the centre of which ought to be, wherever practicable, at a uniform distance and in a uniform direction from the centre of the mound. There is to be a "*pit*" on *each* side of every mound, distant eighteen inches outside of the trench. The trench may be expected hereafter to be covered by tufts of grass, and thus to indicate the place of the mound, when the mound itself may have become obliterated by time or accident.

At meander corners, the "*pit*" is to be directly on the line, *eight links* further from the water than the mound. Wherever necessity is found for deviating from these rules in respect to the "*pits*," the course and distance to each is to be stated in the field books.

Perpetuity in the mound is a great desideratum. In forming it with light alluvial soil the surveyor may find it necessary to make due allowance for the future settling of the earth, and thus making the mound more elevated than would be necessary in a more compact and tenacious soil, and increasing the base of it. In so doing, the relative proportions between the township mound and other mounds is to be preserved as nearly as may be.

The earth is to be pressed down with the shovel during the process of piling it up. Mounds are to be *covered* with sod, grass side up, where sod is to be had; but, in forming a mound, *sod* is *never* to be *wrought up* with the earth, because sod decays, and in the process of decomposing it will cause the mound to become porous, and therefore liable to premature destruction.

POSTS IN MOUNDS,

Must show above the top of the mound ten or twelve inches, and be notched and marked precisely as they would be for the same corner without the mound.

MOUND MEMORIALS.

Besides the *charcoal*, *marked stone* or *charred stake*, one or the other of which must be lodged in the earth at the point of the corner, the deputy-

surveyor is recommended to plant *midway* between each pit and the trench, seeds of some tree, (those of fruit trees adapted to the climate being always to be preferred,) so that, in course of time, should such take root, a small clump of trees may possibly hereafter note the place of the corner. The facts of planting such seed, and the kind thereof, are matters to be truthfully noted in the field book.

WITNESS MOUNDS TO TOWNSHIP OR SECTION CORNERS.

If a township or section corner, in a situation where bearing or witness trees are not found within a reasonable distance therefrom, shall fall within a ravine, or in any other situation where the nature of the ground, or the circumstances of its locality, shall be such as may prevent, or prove unfavorable to the erection of a mound, you will perpetuate such corner by selecting in the immediate vicinity thereof a suitable plot of ground as a site for a bearing or *witness mound*, and erect thereon a mound of earth in the same manner and conditioned in every respect, with *charcoal, stone or charred stake* deposited beneath, as before directed; and measure and state in your field book the distance and course from the position of the true corner of the bearing or witness mound so placed and erected.

DOUBLE CORNERS.

Such corners are to be nowhere except on the base and standard lines, whereon are to appear both the corners which mark the intersections of the lines which close thereon, and those from which the surveys start on the north. On these lines, and at the time of running the same, the township, section, and quarter section corners are to be planted, and each of these is a corner common to *two*, (whether township or section corners,) on the north side of the line, and must be so marked.

The corners which are established on the standard parallel, at the time of running it, are to be known as "*standard corners*," and, in addition to all the *ordinary* marks, (as herein prescribed,) they will be marked with the letters S. C. Closing corners will be marked with the letters C. C. in addition to other marks.

The standard parallels are designed to be run *in advance* of the contiguous surveys on the south of them, but circumstances may exist which will *impede* or temporarily delay the *due* extension of the standard; and when, from uncontrollable causes, the *contiguous townships* must be surveyed in advance of the time of extending the standard, in any such event it will become the duty of the deputy who shall afterwards survey any such standard to plant thereon the *double set* of corners, to wit, the standard corners, to be marked S. C., and the closing ones which are to be marked C. C.; and to make such measurements as may be necessary to connect the closing corners and complete the unfinished meridional lines of such contiguous and prior surveys, on the principles herein set forth, under the different heads of "*exterior or township lines*," and of "*diagram B*."

You will recollect that the corners, (whether township or section corners,) which are *common to two*, (two townships or two sections,) are not to be planted *diagonally* like those which are common to *four*, but with the flat sides facing the cardinal points, and on which the marks and notches are made as usual. This, it will be perceived, will serve yet more fully to distinguish the standard parallels from all other lines.

THE MEANDERING OF NAVIGABLE STREAMS.

1. Standing with the face looking *down* stream, the bank on the *left* hand is termed the "left bank," and that on the *right* hand the "right bank." These terms are to be universally used to distinguish the two banks of a river or stream.

2. Both banks of *navigable* rivers are to be meandered by taking the courses and distances of their sinuosities, and the same are to be entered in the field book.

At those points where either the township or section lines intersect the banks of a navigable stream, *posts*, or, where necessary, *mounds of earth* or *stone*, are to be established at the time of running these lines. These are called "meander corners;" and in meandering you are to commence at one of these corners on the township line, coursing the banks, and measuring the distance of each course from your commencing corner to the next "meander corner," upon the same or another boundary of the same township, carefully noting your intersection with all intermediate meander corners. By the same method you are to meander the opposite bank of the same river.

The crossing distance *between* the *meander corners* on same line is to be ascertained by triangulation, in order that the river may be protracted with entire accuracy. The particulars to be given in the field notes.

3. You are also to meander, in manner aforesaid, all *lakes* and deep ponds of the area of twenty-five acres and upwards; also navigable bayous; *shallow* ponds, readily to be drained, or likely to dry up, are not to be meandered.

You will notice all streams of water falling into the river, lake, or bayou you are surveying, stating the width of the same at their mouth; also all springs, noting the size thereof and depth, and whether the water be pure or mineral; also the head and mouth of all bayous; and all islands, rapids and bars are to be noticed, with intersections to their upper and lower points to establish their exact situation. You will also note the elevation of the banks of rivers and streams, the heights of falls and cascades, and the length of rapids.

4. The precise relative position of islands, in a township made fractional by the river in which the same are situated, is to be determined trigonometrically—sighting to a flag or other fixed object on the island, from a special and carefully measured base line, connected with the surveyed lines, on or near the river bank, you are to form connection between the meander corners on the river to points corresponding thereto, in direct line, on the bank of the island, and there establish the proper meander corners, and calculate the distance across.

5. In meandering lakes, ponds, or bayous, you are to commence at a meander corner upon the township line, and proceed as above directed for the banks of a navigable stream. But where a lake, pond, or bayou lies entirely within the township boundaries, you will commence at a meander corner established in subdividing, and from thence take the courses and distances of the entire margin of the same, noting the intersection with all the meander corners previously established thereon.

6. To meander a pond lying entirely within the boundaries of a section, you will run and measure *two* lines thereunto from the nearest section or quarter section corner on *opposite* sides of such pond, giving the courses of such lines. At *each* of the points where such lines shall intersect the margin of such pond, you will establish a *witness* point, by fixing a post in

the ground, and taking bearings to any adjacent trees, or, if necessary, raising a mound.

The relative position of these points being thus definitely fixed in the section, the meandering will commence at one of them, and be continued to the other, noting the intersection, and thence to the beginning. The proceedings are to be fully entered in the field book.

7. In taking the connection of an island with the main land, when there is no meander corner in line, opposite thereto, to sight from, you will measure a special base from the meander corner nearest to such island, and from such base you will triangulate to some fixed point on the shore of the island, ascertain the distance across, and there establish a *special* meander corner, wherefrom you will commence to meander the island.

The field notes of meanders will be set forth in the body of the field book according to the dates when the work is performed, as illustrated in the specimen notes annexed. They are to state and describe particularly the meander corner from which they commenced, each one with which they close, and are to exhibit the meanders of each fractional section separately; following, and composing a part of such notes, will be given a description of the land, timber, depth of inundation to which the bottom is subject, and the banks, current, and bottom of the stream or body of water you are meandering.

9. No blazes or marks of any description are to be made on the lines meandered between the established corners, but the utmost care must be taken to pass no object of topography, *or change therein*, without giving a particular description thereof in its proper place in your meander notes.

OF FIELD BOOKS.

The *field notes* afford the elements from which the plats and calculations in relation to the public surveys are made. They are the source wherefrom the description and evidence of locations and boundaries are officially delineated and set forth. They therefore must be a faithful, distinct and minute record of every thing officially done and observed by the surveyor and his assistants, pursuant to instructions, in relation to running, measuring, and marking lines, establishing boundary corners, &c.; and present, as far as possible, a full and complete *topographical description* of the country surveyed, as to every matter of useful information, or likely to gratify public curiosity.

There will be sundry separate and distinct field books of surveys, as follows:

Field notes of the *meridian* and *base* lines, showing the establishment of the *township*, *section* or mile, and *quarter section* or half mile, boundary corners thereon; with the crossings of streams, ravines, hills, and mountains; character of soil, timber, minerals, &c.

Field notes of the "*standard parallels*, or correction lines," will show the establishment of the township, section, and quarter section corners, besides exhibiting the topography of the country on line, as required on the base and meridian lines.

Field notes of the *exterior* lines of *townships*, showing the establishment of corners on lines, and the topography, as aforesaid.

Field notes of the *subdivisions* of *townships* into sections and quarter sections.

The field notes must in all cases be taken precisely in the order in which the work is done on the ground, and the *date* of each day's work must fol-

low immediately after the notes thereof. The *variation of the needle* must always occupy a *separate line* preceding the notes of measurements on line.

The exhibition of every mile of surveying, whether on township or subdivisinal lines, must be *complete in itself*, and be separated by a black line drawn across the paper.

The description of the surface, soil, minerals, timber, undergrowth, &c., on *each mile* of line, is to follow the notes of survey of such line, and not be mixed up with them.

No abbreviations of words are allowable, except of such words as are *constantly* occurring, such as "*sec.*" for "*section*;" "*in. diam.*" for "*inches diameter*;" "*chs.*" for "*chains*;" "*lks.*" for "*links*;" "*dist.*" for "*distant*," &c. Proper names must never be abbreviated, however often their recurrence.

The nature of the subject-matter of the field book is to form its title page, showing the State or Territory where such survey lies, by whom surveyed, and the dates of commencement and completion of the work. The second page is to contain the names and duties of assistants. Whenever a new assistant is employed, or the duties of any one of them are changed, such facts, with the reasons therefor, are to be stated in an appropriate entry immediately preceding the notes taken under such changed arrangements. With the notes of the *exterior* lines of townships, the deputy is to submit a plat of the lines run, on a scale of two inches to the mile, on which are to be noted all the objects of topography on line necessary to illustrate the notes, viz.: the distances on line at the crossings of streams, so far as such can be noted on the paper, and the direction of each by an arrow-head pointing down stream; also the intersection of line by prairies, marshes, swamps, ravines, ponds, lakes, hills, mountains, and all other matters indicated by the notes, to the fullest extent practicable.

With the instructions for making subdivisinal surveys of townships into sections, the deputy will be furnished by the Surveyor-General with a diagram of the *exterior* lines of the townships to be subdivided, (on the above named scale,) upon which are carefully to be laid down the measurements of each of the section lines on such boundaries whereon he is to close, the magnetic variation of each mile, and the particular description of each corner. P. in M. signifies post in mound. And on such diagram the deputy who subdivides will make appropriate sketches of the various objects of topography as they occur on his lines, so as to exhibit not only the points on line at which the same occur, but also the direction and position of each between the lines, or within each section, so that every object of topography may be properly completed or connected in the showing.

These notes must be distinctly written out, in language precise and clear, and their figures, letters, words, and meaning are always to be unmistakable. No leaf is to be cut or mutilated, and none to be taken out, whereby suspicion might be created that the missing leaf contained matter which the deputy believed it to be his interest to conceal.

SUMMARY OF OBJECTS AND DATA REQUIRED TO BE NOTED.

1. The precise length of every line run, noting all necessary off-sets therefrom, with the reason and mode thereof.
2. The kind and diameter of all "*bearing trees*," with the course and distance of the same from their respective corners; and the precise relative position of *witness corners* to the *true corners*.
3. The kind of materials, (earth or stone,) of which *mounds* are constructed—the fact of their being conditioned according to instructions—

with the course and distance of the "*pits*," from the centre of the mound, where necessity exists for deviating from the *general* rule.

4. *Trees on line.* The name, diameter, and distance on line to all trees which it intersects.

5. Intersections by line of *land objects.* The distance at which the line first intersects and then leaves every *settler's claim and improvement*; prairie, river, creek, or other "*bottom*;" or swamp, marsh, grove, and wind fall, with the course of the same at both points of intersection; also the distances at which you begin to ascend, arrive at the top, begin to descend, and reach the foot of all remarkable hills and ridges, with their courses, and *estimated* height, in feet, above the level land of the surrounding country, or above the bottom lands, ravines, or waters near which they are situated.

6. Intersections by line of *water objects.* All rivers, creeks, and smaller streams of water which the line crosses; the distance on line at the points of intersection, and their *widths on line.* In cases of *navigable* streams, their width will be ascertained between the *meander corners*, as set forth under the proper head.

7. The land's *surface*—whether level, rolling, broken, or hilly.

8. The *soil*—whether first, second, or third rate.

9. *Timber*—the several kinds of timber and undergrowth, in the order in which they predominate.

10. *Bottom lands*—to be described as wet or dry, and if subject to inundation, state to what depth.

11. *Springs of water*—whether fresh, saline, or mineral, with the course of the stream flowing from them.

12. *Lakes and ponds*—describing their banks and giving their height, and also the depth of water, and whether it be pure or stagnant.

13. *Improvements.* Towns and villages; Indian towns and wigwams; houses or cabins; fields, or other improvements; sugar tree groves, sugar camps, mill seats, forges, and factories.

14. *Coal* banks or beds; *peat* or turf grounds; *minerals* and ores; with particular description of the same as to quality and extent, and all *diggings* therefor; also *salt* springs and licks. All reliable information you can obtain respecting these objects, whether they be on your immediate line or not, is to appear in the general description to be given at the end of the notes.

15. *Roads and trails*, with their directions, whence and whither.

16. Rapids, cataracts, cascades, or falls of water, with the height of their fall in feet.

17. Precipices, caves, sink holes, ravines, stone quarries, ledges of rocks, with the kind of stone they afford.

18. *Natural curiosities*, interesting fossils, petrifications, organic remains, &c.; also all ancient works of art, such as mounds, fortifications, embankments, ditches, or objects of like nature.

19. The *variation* of the needle must be noted at all points or places on the lines where there is found any material *change* of variation, and the position of such points must be perfectly identified in the notes.

20. Besides the ordinary notes taken on line, (and which must always be written down on the spot, leaving nothing to be supplied by memory,) the deputy will subjoin, at the conclusion of his book, such further description or information touching any matter or thing connected with the township, (or other survey,) which he may be able to afford, and may deem useful or necessary to be known—with a *general description* of the town-

ship in the *aggregate*, as respects the face of the country, its soil and geological features, timber, minerals, waters, &c.

SWAMP LANDS.

By the Act of Congress approved September 28, 1850, swamp and overflowed lands "unfit for cultivation," are granted to the State in which they are situated. In order clearly to define the quantity and locality of such lands, the field notes of surveys, in addition to the other objects of topography required to be noted, are to indicate the points at which you enter all lands which are evidently subject to such grant, and to show the distinctive character of the land so noted; whether it is a swamp or marsh, or otherwise subject to inundation to an extent that, without artificial means, would render it "unfit for cultivation." The depth of inundation is to be stated, as determined from indications on the trees where timber exists; and its frequency is to be set forth as accurately as may be, either from your own knowledge of the general character of the stream which overflows, or from reliable information to be obtained from others. The words "unfit for cultivation," are to be employed in addition to the usual phraseology in regard to entering or leaving such swamps, marshy, or overflowed lands. It may be that sometimes the margin of bottom, swamp, or marsh, in which such uncultivable land exists, is not identical with the margin of the body of land "unfit for cultivation;" and in such cases a separate entry must be made for each, opposite the marginal distance at which they respectively occur.

But in case where lands are overflowed by *artificial* means, (say by dams for milling, logging, or for other purposes,) you are not officially to regard such overflow, but will continue your lines across the same without setting meander posts, stating particularly in the notes the depth of the water, and how the overflow was caused.

SPECIAL INSTRUCTION RESPECTING THE NOTING OF SETTLERS' CLAIMS IN OREGON, WASHINGTON, AND NEW MEXICO.

The law requires that such claims should be laid down temporarily on the township plats; in order to do which, it is indispensably necessary to obtain, to some extent, connections of these claims with the lines of survey. Under the head of "intersection by line of land objects," the deputy is required to note the *points* in line *whereat* it may be intersected by such claims; but, in addition thereto, there must be obtained at least *one angle* of each claim, with its course and distance either from the point of intersection, or from an established corner boundary, so that its connection with the regular survey will be legally determined. If the settler's *dwelling* or barn is visible from line, the bearings thereof should be carefully taken from *two* points noted on line, and set forth in the field notes.

AFFIDAVITS TO FIELD NOTES.

At the close of the notes and the *general description*, is to follow an affidavit, a form for which is given; and to enable the deputy-surveyor fully to understand and appreciate the responsibility under which he is acting, his attention is invited to the provisions of the second section of the Act of Congress, approved August 8, 1846, entitled "An act to equalize the compensation of the Surveyor-General of the public lands of the United States, and for other purposes," and which is as follows:

"Sec. 2. That the Surveyors-General of the public lands of the United States, in addition to the oath now authorized by law to be administered to deputies on their appointment to office, shall require each of their deputies, on the return of his surveys, to take and subscribe an oath or affirmation that those surveys have been faithfully and correctly executed according to law and the instructions of the Surveyor-General; and on satisfactory evidence being presented to any court of competent jurisdiction, that such surveys, or any part thereof, had not been thus executed, the deputy making such false oath or affirmation shall be deemed guilty of perjury, and shall suffer all the pains and penalties attached to that offence; and the district-attorney of the United States for the time being, in whose district any such false, erroneous, or fraudulent surveys shall have been executed, shall, upon the application of the proper Surveyor-General, immediately institute suit upon the bond of such deputy; and the institution of such suit shall act as a lien upon any property owned or held by such deputy, or his sureties, at the time such suit was instituted."

Following the "general description" of the township, is to be "A list of the names of the individuals employed to assist in running, measuring and marking the lines and corners described in the foregoing field notes of township No. _____ of the *base line* of range No. _____ of the _____ *meridian*, showing the respective capacities in which they acted."

FORM OF OFFICIAL OATHS TO BE TAKEN PRIOR TO ENTERING UPON DUTY.

For a deputy surveyor.

I, A. B., having been appointed a deputy-surveyor of the lands of the United States in _____, do solemnly swear (or affirm) that I will well and faithfully, and to the best of my skill and ability, execute the duties confided to me pursuant to a contract with C. D., Surveyor-General of public lands in _____, bearing date the _____ day of _____, 185—, according to the laws of the United States and the instructions received from the said Surveyor-General.

(To be sworn and subscribed before a justice of the peace, or other officer authorized to administer oaths.)

For chainman.

I, E. F., do solemnly swear (or affirm) that I will faithfully execute the duties of chain carrier; that I will level the chain upon uneven ground, and plumb the tally pins, whether by sticking or dropping the same; that I will report the true distance to all notable objects, and the true length of all lines that I assist in measuring, to the best of my skill and ability.

(To be sworn and subscribed as above.)

For flagman or axeman.

I, G. H., do solemnly swear (or affirm) that I will well and truly perform the duties of _____, according to instructions given me, and to the best of my skill and ability.

(To be sworn and subscribed as above.)

EXTERIORS OR TOWNSHIP LINES.

The principal meridian, the base line and the standard parallels having been first run, measured, and marked, and the corner boundaries thereon established, according to instructions, the process of running, measuring, and marking the exterior lines of townships will be as follows :

Townships situated north of the base line, and west of the principal meridian.

Commence at No. 1, (see figures on diagram A,) being the southwest corner of township 1 north, range 1, west, as established on the base line; thence north, on a true meridian line, four hundred and eighty chains, establishing the section and quarter section corners thereon, as per instructions, to No. 2, whereat establish the corner of townships 1 and 2 north, ranges 1 and 2, west; thence east, on a random or trial line, setting *temporary* section and quarter section stakes, to No. 3, where measure and note the distance at which the line intersects the eastern boundary, north or south of the *true* or established corner. Run and measure westward, on the true line, (taking care to note all the land and water crossings, &c., as per instructions,) to No. 4, which is identical with No. 2, establishing the section and quarter section *permanent corners* on said line. Should it happen, however, that such random line falls short, or overruns in length, or intersects the eastern boundary of the township at more than three chains and fifty links distance from the *true* corner thereon, as compared with the corresponding boundary on the south, (either of which would indicate an important error in the surveying,) the lines must be *retraced*, even if found necessary to remeasure the meridional boundaries of the township, (especially the western boundary,) so as to discover and correct the error; in doing which, the *true corners* must be established and marked, and the *false ones* destroyed and obliterated, to prevent confusion in future; and *all the facts* must be distinctly set forth in the notes. Thence proceed in a similar manner from No. 4 to No. 5, No. 5 to No. 6, No. 6 to No. 7, and so on to No. 10, the southwest corner of township 4 north, range 1, west. Thence north, still on a true meridian line, establishing the mile and half-mile corners, until reaching the *standard parallel* or correction line; throwing the *excess* over, or *deficiency* under, *four hundred and eighty chains*, on the *last* half-mile, according to law, and at the intersection establishing the "*closing corner*," the distance of which *from* the standard corner must be measured and noted as required by the instructions. But should it ever so happen that some impassable barrier will have prevented or delayed the extension of the standard parallel along and above the field of present survey, then the deputy will plant, in place, the corner for the township, subject to correction thereafter, should such parallel be extended.

North of the base line, and east of the principal meridian.

Commence at No. 1, being the *southeast* corner of township 1 north, range 1, east, and proceed as with townships situated "north and west," except that the *random* or trial lines will be run and measured *west*, and the *true* lines east, throwing the excess over or deficiency under four hundred and eighty chains on the *west end* of the line, as required by law; wherefore the surveyor will commence his measurement with the length of the deficient or excessive half section boundary on the west of the town-

ship, and thus the remaining measurements will all be *even* miles and half-miles.

METHOD OF SUBDIVIDING.

1. The first mile, both of the south and east boundaries of each township you are required to subdivide, is to be carefully traced and measured before you enter upon the subdivision thereof. This will enable you to observe any change that may have taken place in the magnetic variation, as it existed at the time of running the township lines, and will also enable you to compare your chaining with that upon the township lines.

2. Any discrepancy, arising either from a change in the magnetic variation or a difference in measurement, is to be carefully noted in the field notes.

3. After adjusting your compass to a variation which you have thus found will retrace the eastern boundary of the township, you will commence at the corner to sections 35 and 36, on the south boundary, and run a line due north, forty chains, to the quarter section corner which you are to establish between sections 35 and 36; continuing due north, forty chains further, you will establish the corner to sections 25, 26, 35 and 36.

4. From the section corner last named, run a *random* line, without blazing, *due east*, for corner of section 25 and 36, in east boundary, and at forty chains from the starting point set a post for *temporary* quarter section corner. If you intersect exactly at the corner, you will blaze your random line back, and establish it as the *true* line; but if your random line intersects the said east boundary, either north or south of said corner, you will measure the distance of such intersection, from which you will calculate a course that will run a *true* line back to the corner from which your random started. You will establish the *permanent* quarter section corner at a point equidistant from the two terminations of the *true* line.

5. From the corner of sections 25, 26, 35, 36, run due north between sections 25 and 26, setting the quarter section post, as before, at forty chains, and at eighty chains establishing the corner of sections 23, 24, 25, 26. Then run a random *due east* for the corner of sections 24 and 25 in east boundary; setting temporary quarter section post at forty chains; correcting back, and establishing *permanent* quarter section corner at the equidistant point on the *true* line, in the manner directed on the line between sections 25 and 36.

6. In this manner you will proceed with the survey of each successive section in the first tier, until you arrive at the north boundary of the township, which you will reach in running up a random line between sections 1 and 2. If this random line should not intersect at the corner established for sections 1, 2, 35 and 36, upon the township line, you will note the distance that you fall east or west of the same, from which distance you will calculate a course that will run a true line south to the corner from which your random started. Where the closing corner is on the base or standard line, a deviation from the general rule is explained under the head of *Diagram B*.

7. The first tier of sections being thus laid out and surveyed, you will return to the south boundary of the township, and from the corner of sections 34 and 35 commence and survey the second tier of sections in the same manner that you pursued in the survey of the first, closing at the section corners on the first tier.

8. In like manner proceed with the survey of each successive tier of sections, until you arrive at the fifth tier; and from each section corner which

you establish upon this tier, you are to run random lines to the corresponding corners established upon the range line forming the western boundary of the township; setting, as you proceed, each *temporary* quarter section post at forty chains from the interior section corner, so as to throw the excess or deficiency of measurement on the extreme tier of quarter sections contiguous to the township boundary; and, on returning, establish the *true* line, and establish thereon the *permanent* quarter section corner.

Quarter-section corners, both upon north and south and upon east and west lines, are to be established at a point *equidistant* from the corresponding section corners, *except* upon the lines closing on the north and west boundaries of the township, and in those situations the quarter section corners will always be established at precisely *forty chains* to the north or west (as the case may be) of the respective section corners from which those lines respectively *start*, by which procedure the excess or deficiency in the measurements will be thrown, according to law, on the extreme tier of quarter sections.

Every north and south section line, except those terminating in the north boundary of the township, is to be eighty chains in length. The east and west section lines, except those terminating on the west boundary of the township, are to be within one hundred links of eighty chains in length; and the north and south boundaries of any one section, except in the extreme western tier, are to be within one hundred links of equal length. The meanders within each fractional section, or between any two meander posts, or of a pond or island in the interior of a section, must close within one chain and fifty links.

Diagram A, illustrates the mode of laying off township exteriors *north* of the *base* line and *east* and *west* of the principal *meridian*, whether between the base and first standard, or between any two standards; and the same general principles will equally apply to townships *south* of the base line and east and west of the meridian, and between any two standards *south*, where the distances between the base and first standard, and between the standards themselves, are five townships or thirty miles.

Diagram B, indicates the mode of laying off a *township* into sections and quarter sections, and the accompanying set of field notes (marked B,) critically illustrate the mode and order of conducting the survey under every variety of circumstances shown by the topography on the diagram. In townships lying *south* of and *contiguous* to the base or to any standard parallel, the lines between the northern tier of sections will be run *north*, and be made to close as *true* lines; quarter section corners will be set at forty chains, and section corners established at the intersection of such section lines with the base or standard, (as the case may be,) and the distance is to be measured and entered in the field book to the nearest corner on such standard or base.

The mode and order of surveying the *exterior* boundaries of a township are illustrated by the specimen field notes marked A; and the mode and order of *subdividing* a township into sections and quarter sections are illustrated by the specimen field notes marked B. The attention of the deputy is particularly directed to these specimens, as indicating not only the method in which his work is to be conducted, but also the order, manner, language, &c., in which his field notes are required to be returned to the Surveyor-General's office; and such specimens are to be deemed part of these instructions, and any *departure* from their details, without special authority, in cases where the circumstances are analogous in practice, *will be regarded as a violation of his contract and oath*.

The subdivisions of fractional sections into forty acre lots, (as near as

may be,) are to be so laid down on the official township plat in *red* lines, as to admit of giving to each a specific designation, if possible, according to its relative position in the fractional section, as per examples afforded by diagram B, as well as by a number, in all cases where the lot cannot properly be designated as a quarter-quarter. Those fractional subdivision lots which are not susceptible of being described according to relative local position, are to be numbered in regular series; No. 1 being (wherever practicable, and as a general rule) either the northeastern or the most easterly fractional lot, and proceeding from east to west and from west to east, alternately, to the end of the series; but such general rule is departed from under circumstances given as examples in fractional sections 4, 7, 19, and 30, where No. 1 is the interior lot of the northern and western tiers of the quarter sections to which there is a corresponding No. 2 given to the exterior lot, and the series of numbers is in continuation of the latter. The lots in the extreme northern and western tiers of quarter sections, containing either more or less than the regular quantity, are always to be numbered as per example. Interior lots in such extreme tiers are to be *twenty* chains wide, and the excess or deficiency of measurement is always to be thrown on the exterior lots; elsewhere, the assumed subdivisional corner will always be a point equidistant from the established corners.

The official township plat to be returned to the General Land Office is to show on its face, on the right hand margin, the meanders of navigable streams, islands, and lakes. Such details are wanted in the adjustment of the surveying accounts, but may be omitted in the copy of the township plat to be furnished to the district land office by the Surveyor-General. A suitable margin for *binding* is to be preserved on the left hand side of each plat. Each plat is to be certified, with table annexed, according to the forms subjoined to "diagram B," and is to show the areas of public land, of private surveys, and of water, with the aggregate area as shown on the diagram.

Each township plat is to be prepared in *triplicate*: one for the General Land Office, one for the district office, and the third to be retained as the record in the office of the Surveyor-General.

The original field books, each bearing the *written approval* of the Surveyor-General, are to be substantially bound into volumes of suitable size, and retained in the Surveyor-General's office, and certified *transcripts* of such field books (to be of *foolscap* size) are to be prepared and forwarded, from time to time, to the General Land Office.

With the copy of each township plat furnished to a district land office, the Surveyor-General is required by law to furnish *descriptive notes* as to the character and quality of the soil and timber found on and in the vicinity of each surveyed line, and giving a description of each corner boundary.

Printed blank forms for such notes will be furnished by the General Land Office. The forms provide eighteen spaces for *meander corners*, which, in most cases, will be sufficient; but when the number shall exceed eighteen, the residue will have to be inserted on the face of the township plat, to be furnished to the Register of the district land office. There is shown a series of meander corners on diagram B., viz.: from No. 1 to No. 22, on the river and islands; 23 to 28 being on Island lake; 29 and 30 on Clear lake; and 31 and 32 on lake in section 26.

There is also a distinct series of numbers, 1 to 7, to designate corners to D. Reed's private survey, and to fractional sections, made such thereby; and the same series is continued from 8 to 14 inclusive, to designate corners to S. William's private survey, and to fractional sections made such

thereby. These are numberings on the plat merely for the purpose of ready reference to the descriptions of such corners to be furnished to the Registers.

The letters on "Diagram B," at the "corners" on the township boundaries, are referred to in the descriptive notes to be furnished to the district land office, but are not required to be inserted on the official plat to be returned to the General Land Office.

No. 703.

Surveys of the Public Lands.

The Act of 24th April, 1820, and the instructions issued under it, directing the manner of subdividing fractional sections containing over one hundred and sixty acres, did not require the absolute platting of every quarter or half-quarter of which the section was susceptible, but contemplated the exercise of discretion so as to prevent small and inconvenient fractions of a fractional section.

It is the duty of Surveyors-General to subdivide fractional sections in conformity to law, and without reference to the existence of the Pre-emption Acts of May 29, 1830, and June 19, 1834.

ATTORNEY-GENERAL'S OFFICE,
August 2, 1837.

Sir:—In your letter of the 14th of June last, you requested my opinion on certain points presented to you by appeal from the Commissioner of the General Land Office, relating to the legality of the survey heretofore made, and adopted by the General Land Office, of the divisions of fractional section 22, township 4, range 1, west, in Stephen's Land District.

It appears from the letters accompanying your letter, that section 22 was made fractional by private claims, and that it contained about two hundred and three acres, lying in such a form as to admit the running out of one complete quarter section, and, of course, of two complete half-quarter sections. Such a division, however, would have left two small irregular and inconvenient fractional tracts, being parts of three fractional quarter sections. To prevent this, the Surveyor-General divided the section into only two parts, by running a line due north from the half-quarter section post, thus making two tracts of a compact and convenient form, each approaching as nearly to the form and contents of a half-quarter section as was practicable, supposing the object of the survey to be to divide the section into tracts of this form, in such a way as to avoid the leaving of small fractional remainders.

James Etheridge had previously claimed and proved a pre-emption right, under the Act of 1830, to the southwest quarter of this section, and W. D. Stone the like right to the fraction in the west part of the southeast quarter; and after the above-mentioned survey came in, they respectively paid, and received certificates—Etheridge for the southwest subdivision of ninety-two and sixty-seven hundredths acres, and Stone for the southeast subdivision of one hundred and ten and fifty hundredths acres, in conformity to which patents have since been issued. Etheridge, however, insists, that as there was an entire quarter section of one hundred and sixty acres, and he the only settler thereon, he was legally entitled to enter such a division; that he took the proper steps to perfect this right; that the survey disregarding the quarter section lines, was illegal; and that it ought to be corrected by subdividing the section agreeably to those lines. This would

enable him to obtain his whole pre-emption rights, but would leave the small fractional remainders above stated.

The single question on which it now appears to be material that I should express an opinion, is, as to the duty of the Surveyor-General to divide the section into regular half-quarter sections. In deciding this question, I have thought it useful to examine the provisions of the several acts of Congress relating to the survey of public lands, commencing with the Act of 18th May, 1796, and ending, so far as regards the present case, with the Act of the 24th April, 1820, (all which acts are in *pari materiâ*;) but I think its solution depends on the first section of the latter act, and on the instructions of the Secretary of the Treasury, issued in pursuance thereof.

The first section of the Act of 1820 provides that the public lands of the United States, when offered at public sale, shall be offered in half-quarter sections; that when offered at private sale, they may be purchased, (at the option of the purchaser,) either in entire sections, half sections, quarter sections, or half-quarter sections; that in every case of the division of a quarter section, the line for such division shall run north and south; and the corners and contents of half-quarter sections be ascertained in the manner directed and prescribed in the Act of the 11th of February, 1805; and that "fractional sections, containing one hundred and sixty acres, or upwards, shall in like manner, as nearly as practicable, be subdivided into half-quarter sections under such rules and regulations as may be prescribed by the Secretary of the Treasury; but fractional sections containing less than one hundred and sixty acres, shall not be divided, but shall be sold entire." Under this latter clause, the Secretary of the Treasury, on the 10th of June, 1820, issued instructions directing that fractional sections, containing more than one hundred and sixty acres, should be "divided into half-quarter sections, by north and south or east and west lines, so as to preserve the most compact and convenient forms."

This instruction, as I am informed, has been understood in the General Land Office, and by the surveyors, to authorize the course adopted by the Surveyor-General in the present case; and I shall assume that it did so. I make this assumption, because the Department is perfectly competent, and best qualified, to construe its own instruction; and because, unless such was its meaning, no question of law under the Act of 1820 could well arise for my consideration; for if the instruction required, as contended by the counsel of Mr. Etheridge, that all the regular half quarter sections of which the fractional section is susceptible, shall be actually formed, then the survey should have been set aside for its non-conformity to the instruction.

The matter is then narrowed to the question, Whether the instruction of 1820, (construing it, as the Surveyor-General has done in the present case,) is a legal and valid exercise of the discretion committed to the Secretary of the Treasury, by the Act of the 24th of April, 1820, above quoted? It will readily occur, that to authorize me to pronounce an instruction of this nature, issued immediately after the enactment of the law, and acted on for so long a period, illegal, the objection should be a very clear one. This is by no means the case in the present instance; and after mature consideration, I am led to answer the question just stated in the *affirmative*, for the three following reasons:—

1. If Congress had intended that fractional sections should, at all events, be divided into half-quarter sections, when their shape admits the formation of any such subdivision, I think they would have said so in explicit terms, and that the discretionary power intrusted to the Secretary would have been plainly confined to the residuary parts of the section.

2. The clause in the first section of the Act of 1820, concerning fractional sections containing less than one hundred and sixty acres, (which are not to be divided at all, but sold entire,) is decisive to show that the Congress which passed that act, did not deem it indispensable that regular half quarter sections should in all practicable cases, be formed by the surveyors; on the contrary, it shows that they preferred a single tract, though containing more than eighty acres, and though capable of forming a regular half quarter and small and inconvenient fractions.

3. I am of opinion that the survey should be made in conformity to the general system established by law, and by the instructions of the Department, without any reference whatever to the existence of a pre-emption law, or to the fact that rights have been claimed and established under it.

I am, sir, very respectfully, your obedient servant,

B. F. BUTLER.

Hon. Levi Woodbury, Secretary of the Treasury.

No. 704.

Surveys and entries of public lands.

It is the duty of Surveyors-General to divide fractional sections containing over one hundred and sixty acres into lots approaching as nearly as practicable to the form and quantity of half quarter sections; and it is competent for the Department to direct the performance of the duty.

The survey is to be made without reference to Pre-emptions, but Pre-emptors are entitled to a legal survey.

A tender for more than the party is entitled to, does not destroy the tender; it may be regarded as precautionary.

It is proper, after tender made and entry defeated by fault of the officers of the Government, to correct the error by ordering a correct course of procedure.

ATTORNEY-GENERAL'S OFFICE,
August 5, 1837.

Sir:—In compliance with the request contained in your letter of the — ultimo, I have looked into the additional report of the Commissioner of the General Land Office in the case of Brown and Reynolds, bearing date the 29th of June last, and, upon the additional facts mentioned therein, have the honor to state the following propositions as the result of further reflection on this case.

1. Under the Act of 1820, and the instructions issued by virtue thereof, it was the duty of the Surveyor-General to divide fractional section 20, containing, as it does, more than one hundred and sixty acres, into lots or tracts of a compact and convenient form, approaching as nearly as practicable, having regard to the shape of the whole fractional section, to the form and contents of half quarter sections.

The reasons on which this opinion is founded will appear in my opinion of the 2d instant, in the case of James Etheridge, to which I beg leave to refer.

2. I suppose it to be competent for the Department to cause the Surveyor-General now to do what he ought to have done when he made the survey; and that it is the duty of the Department so to direct, if such a course be necessary to the protection of any right duly claimed under the pre-emption laws or otherwise. For although the Surveyor-General is to be

guided in the performance of his duty exclusively by the laws and instructions relating to surveys, and is to execute that duty without reference to its possible effects on pre-emption claims; yet, where a pre-emption claim exists, and has been duly established, the party is clearly entitled to the benefit of a survey made in conformity to law.

3. It appears to me that the designation of Reynolds, entered in the abstract of the land officers, was sufficiently precise to entitle him to take his floating right in the west part of fractional section 20, including the small tract now marked E; provided, by the survey thereafter to be made, a division should be legally formed, embracing tract E, and liable, according to the rules stated in my opinion of the 27th of April last, to be taken under a floating right.

4. I am also of opinion, that as the survey was erroneous in not dividing fractional section 20 into lots or tracts of a compact and convenient form, approaching as nearly as might be to the form and contents of half quarter sections, and as Reynolds could not control or alter that survey, his tender for tract A, of one hundred and forty-nine acres, ought not to be regarded as a claim to the whole and to no less than the whole of that tract; but rather as applying to the whole, if by law he was entitled to purchase the whole; and if not, then to so much of it, if any, as the law would entitle him to purchase by virtue of his floating right; and I think the affidavit of Reynolds, made on the 3d of March, 1836, and the other proceedings on his part, reconcilable with this view of the subject.

5. It will follow, from the foregoing propositions, that the course proposed by the Commissioner of the General Land Office, viz.: to allow Reynolds to complete his purchase to the tract marked E, may properly be adopted, provided tract E could have been made, or can now be made, under the Act of 1820, a legal subdivision of fractional section 20; but if not, and any portion of tract A, including tract E, could have been made, and can now be made, under the Act of 1820, a legal subdivision of the section, then I think Reynolds should be allowed to complete his purchase to such larger subdivision, provided it be not so large, when added to the tract selected by Brown for his float, as to exceed, in the aggregate, one hundred and sixty acres.

Some other questions have been raised by Mr. Sherman, in his observations addressed to me on the report of the Commissioner; but as they were not presented by your communication, I have not deemed it proper to examine them; nor, if you concur in the views above stated, will you probably find it material to do so.

I have the honor to be, very respectfully,

Your obedient servant,

B. F. BUTLER.

To the Hon. Levi Woodbury, Secretary of the Treasury.

No. 705.

In relation to the Surveys of Indian Reservations in Kansas.

GENERAL LAND OFFICE,
November 16, 1854.

Sir:—I have the honor to acknowledge the receipt of the communication from the Commissioner of Indian Affairs, dated 8th inst., referred by you to this Office, and to inform you that the Surveyor-General has been instructed in regard to the surveys of the particular cessions of lands in Kansas, respecting which the Department has manifested special interest.

After laying off the base line, the earliest surveying operations will be those preliminary to subdividing for market the bodies of country ceded by the *Ioways*, *Delawares*, and the united tribes of *Peorias* and *Kaskaskias*, *Piankeshaws* and *Weas*, stipulated to be sold for the benefit of those tribes. The next operation will be to establish the township and subdivisional corners, and to close the surveyed lines on the boundaries of the permanent reservations, which are laid down on Lippincott's Map of Kansas and Nebraska, under the sanction of the Indian office; but in order to do so, the outlines of such permanent Indian reservations must necessarily be pre-established and known. As indicated on the enclosed diagram (C,) the proposed order of survey is first to run and establish the base line from the point A, on the Missouri river, at the intersection of the fortieth parallel with that river, in the direction of C, its proposed terminus, as far as the point B, in order to admit of running the "guide meridian," B G, from which will start the "standard parallel," or correction lines, at intervals of every five townships, or thirty miles from D to H, E to I, F to K, G to L, and the township, section, and quarter-section corners, are to be duly established on both the guide meridian and standard lines, as they are run; and all this is to be done before the bodies of land which are desired to be the earliest to be subdivided for sale, can be approached; and so far, the Surveyor-General has been instructed. The subsequent operation, next in order, will be to extend the township and sectional lines from the pre-established corners so as, (by judicious management on part of the Surveyor-General,) to embrace the three bodies of land, full colored *yellow*, on the diagram (C.) The lines of townships are colored *blue*, and those, and also the sectional lines, will close on the *reservations* colored *red*.

The line of division between the *Ioways* and *Sacs* and *Foxes* is said, in the late Ioway treaty, to have been run by Isaac M'Coy, (Stats. at Large, 1853-4, p. 146.) These cessions are adjoining, and the Ioway lands are to be sold for the benefit of that tribe. It is not designed to make fractions on both sides of that line, (which would unnecessarily mar the surveys,) but to suffer the surveys to proceed *uninterruptedly* over it, showing its course by taking occasional connections with it, so as to admit of its course being accurately delineated, as a dotted line, on the appropriate township plats, for the purpose of enabling the Department to adjust the Ioway claim to the proceeds of the lands sold within their proper limits, as such course of proceeding seems to be contemplated by the treaty. The survey of the line between the *Delaware* and *Kickapoo* cessions is wanted also for a purpose precisely similar to the above; and the surveys of the exterior lines of the cessions by the *Peorias* and *Kaskaskias*, (ninety-four thousand and eighty acres,) and *Piankeshaws* and *Weas*, (one hundred and fifty-eight thousand four hundred acres,) are also wanted for a like purpose. Besides the foregoing there are needed the surveys of the exterior lines of the permanent Indian reservations, colored *red* on the accompanying diagram, to wit: the

Ioway, Delaware, Pottawatomies, Sac and Fox, Ottawa and Miami reservations, lying within the limits of the present programme of surveys, and also others, (which need not here be enumerated,) lying outside of those limits.

Judging from the tenor of some of the treaties, this Office had been led to suppose that many of the lines now required had been laid off, and that evidences were extant, but according to the letter of the Commissioner of Indian Affairs, they all, or mostly, yet remain to be established, and how this can best be done, is the matter to be considered and determined; and meanwhile, looking to the instructions that have, *thus far*, been given to the Surveyor-General, I see nothing to be altered except to restrict his *fourth standard parallel* to the western line of the *Miami Reserve*, *whenver that line can be known*, otherwise the standard will be continued, through that reserve, eastward, to the western line of Missouri, a probable distance of eighteen miles.

As the United States surveyors are paid by *the mile*, it cannot therefore be expected that they can afford to be retarded in their regular mechanical operations, for the purpose of determining Indian boundary lines; such will have to be marked and defined in advance of the regular surveys, and it is respectfully suggested that *such lines* can best be determined by surveyors and agents, acting independently of the regular deputy-surveyors, and under *special* contracts adapted to such purpose.

But, as now understood, the Commissioner of Indian Affairs, in his letter, which you have been pleased to refer to me, seems to contemplate not only the survey of the outlines of the Indian reservations referred to, but, moreover, the subdivisinal surveys of the *reservations themselves*, for he says that "to me it seems absolutely necessary that the survey of all should be continuous, and not, when a reservation is arrived at, that it should be passed over, thus breaking the chain of the legal subdivisions. The convenience of this arrangement is evident, and will be of material assistance to this Bureau, in carrying out the views for civilizing the tribes, which were entertained when treating with them."

The proposed programme, it will be seen, contemplates closing the lines of the public surveys *on the lines* of the *Indian reservations*, so as to *distinguish the saleable* from the *reserved* lands; but if the policy were adopted of subdividing the reservations, and having them surveyed in connection with the public lands adjacent, without discrimination, it would seem decidedly to be the better plan to suffer the *regular* surveys to proceed, uninterruptedly, over the Indian lands at once, under the direction of the Surveyor-General, as it would be of very questionable propriety, to have a separate corps of surveyors at work on the Indians reservations, acting under another authority and not amenable to that officer. After the entire body of country had been so surveyed, then the Indian lines could be ascertained so as to show them by dotted lines on the plats of survey, and, in the event of any such arrangement, the specific appropriations made by Congress for effecting such Indian surveys, (alluded to in Mr. Manypenny's letter of 8th inst.,) would, appropriately be turned over to the Kansas surveying fund for such purpose.

As respects *the closing* of the lines of the lands now public and saleable on the lines of reservations, stipulated to be permanent, and making fractions thereon, this Office can perceive no substantial objection whatever, for, if the reserved lands are to be surveyed for the benefit of the Indians, the Indian lands lying on the common boundary between them, and the public lands must necessarily become fractional tracts. Where sections are intersected by the Indian lines, the fractional part within the reserve, were it surveyed, would become the complement of a full section to the fractional

part lying outside of the same, and which is saleable land; and in case actual connections of the township and sectional lines are *not* made between the saleable and unsaleable, but a discriminating line between them is drawn on paper, nevertheless, the precise quantities of the saleable fractions would have to be determined by protraction and calculation.

I beg leave to conclude by remarking that in case the views presented by the Indian office should be adopted, as respects *continuous* surveys, it is desirable that the entire management of the same should be confided to the Surveyor-General, that the special funds appropriated for such purpose may be turned over to the Kansas surveying fund, and that the decision be made known as soon as practicable.

I have the honor, &c.,

JOHN WILSON.

Hon. R. M'Clelland, Secretary of the Interior.

APPENDIX.

No. 42½.—An Act to remove the land office from Chocchuma to Grenada in the State of Mississippi.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the land office at Chocchuma, in the county of Tallahatchie, State of Mississippi, shall be removed to and located in the town of Grenada, in Yalabusha county, in said State, and it shall be the duty of the Registers and the Receivers of public money for said land office within sixty days from and after the passage of this act, to remove the books, records, and whatever else belongs to said office, to the place of location, as herein provided for.

Approved, July 4, 1840.

No. 67½.—Joint Resolution to institute proceedings to ascertain the title to Rush Island, ceded in the Caddo treaty.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the District Attorney of the United States for the Western District of Louisiana, be and he is hereby directed to institute such legal proceedings in the proper court, as may be necessary to vindicate the right of the United States to Rush Island, which is alleged to have been improperly included in the limits of the lands ceded by the Caddo Indians to the United States, by the treaty of the first July, eighteen hundred and thirty-five, and reserved by said treaty in favor of certain persons by the name of Grappe.

Approved, August 30, 1842.

No. 146½.—An Act giving the consent of the Government of the United States to the State of Texas to extend her eastern boundary, so as to include within her limits one half of Sabine Pass, Sabine Lake and Sabine River, as far north as the thirty-second degree of north latitude.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Congress consents that the legislature of the State of Texas may extend her eastern boundary so

as to include within her limits one half of Sabine Pass, one half of Sabine Lake, also one half of Sabine River, from its mouth as far north as the thirty-second degree of north latitude.

Approved, July 5, 1848.

NO. 150 $\frac{1}{2}$.—A Resolution to sanction an agreement made between the Wyandotts and Delawares, for the purchase of certain lands by the former, of the latter tribe of Indians.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the agreement, in writing, between the Delaware nation of Indians, and the Wyandott nation of Indians, made and entered into on the fourteenth day of December, eighteen hundred and forty-three, for the purchase of certain lands by the latter of the former tribe of Indians, and which said agreement, in writing, is as follows:

“Whereas, from a long and intimate acquaintance, and the ardent friendship which has for a great many years existed between the Delawares and Wyandotts, and from a mutual desire that the same feeling shall continue and be more strengthened by becoming near neighbors to each other; therefore the said parties, the Delawares on one side, and the Wyandotts on the other, in full counsel assembled, have agreed, and do agree to the following stipulations, to wit:

ART. 1. The Delaware nation of Indians residing between the Missouri and Kansas rivers, being very anxious to have their uncles, the Wyandotts, to settle and reside near them, do hereby donate, grant and quit-claim forever, to the Wyandott nation, three sections of land containing six hundred and forty acres each, lying and being situated at the point of the junction of the Missouri and Kansas rivers.

ART. 2. The Delaware chiefs for themselves and by the unanimous consent of their people, do hereby cede, grant, quit-claim to the Wyandott nation and their heirs forever, thirty-six sections of land, each containing six hundred and forty acres, situated between the aforesaid Missouri and Kansas rivers, and adjoining on the west the aforesaid three donated sections, making in all thirty-nine sections of land, bounded as follows, viz.: Commencing at the point at the junction of the aforesaid Missouri and Kansas rivers, running west along the Kansas river, sufficiently far to include the aforesaid thirty-nine sections; thence running north to the Missouri river; thence down the said river with its meanders to the place of beginning; to be surveyed in as near a square form as the rivers and territory ceded will admit of.

ART. 3. In consideration of the foregoing donation and cession of land, the Wyandott chiefs bind themselves, successors in office, and their people, to pay to the Delaware nation of Indians forty-six thousand and eighty dollars, as follows, viz., six thousand and eighty dollars to be paid the year eighteen hundred and forty-four, and four thousand dollars annually thereafter for ten years.

ART. 4. It is hereby distinctly understood between the contracting parties, that the aforesaid agreement shall not be binding or obligatory until the President of the United States shall have approved the same, and caused it to be recorded in the War Department.

In testimony whereof, we, the chiefs and head men of the Delaware nation, and the chiefs and head men of the Wyandott nation, have this four-

teenth day of December, eighteen hundred and forty-three, set our signatures.

Captain	NAH-KOO-MER, his x mark,	}	Delaware chiefs.
Captain	KETCHUM, his x mark,		
	SUAVEC, his x mark,		
	JACKENDUTHEN, his x mark,		
	SAN-KOCKSA, his x mark,		
	COCK-I-TO-WA, his x mark,		
	SA-SAR-SIT-TONA, his x mark,	}	Wyandotts.
	PEMP-SCHAH, his x mark,		
	NAH-QUE-NON, his x mark,		
	HENRY JACQUIS, his x mark,		
	JAMES WASHINGTON, his x mark,		
	MATTHEW PEACOCK, his x mark,		
	JAMES BIGTREE, his x mark,		
	GEORGE ARMSTRONG, his x mark,		
	TAN-ROO-MIE, his x mark,		
	T. A. HICKS,		

Signed in open counsel in presence of
 JONATHAN PHILLIPS, sub-agent for the Wyandotts.
 RICHARD W. CUMMINS, Indian Agent.
 JAMES M. SIMPSON.
 CHARLES GRAHAM.
 JOEL WALKER, Secretary of the Wyandott Council.
 HENRY TIBLOW, Indian Interpreter, Delaware."

be, and the same is hereby confirmed: *Provided*, That the Wyandott Indian nation shall take no better right or interest in and to said lands than is now vested in the Delaware nation of Indians.

Approved, July 25, 1848.

No. 289½.—An Act to transfer certain rights and duties conferred upon the trustees of the town of Vincennes, Indiana, to the common council of the city of Vincennes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all the rights and duties conferred upon the trustees of the town of Vincennes, in the State of Indiana, under the act entitled "An act to adjust the claims to lots in the town of Vincennes, and for the sale of the land appropriated as a common for the use of the inhabitants of the said town," approved the twentieth day of April, eighteen hundred and eighteen, be, and the same are hereby, transferred to and vested in the common council of the city of Vincennes, in said State.

Approved, June 2, 1856.

No. 332½.—An Act in addition to an act more effectually to provide for the punishment of certain crimes against the United States, and for other purposes.

* * * * *

SEC. 5. *And be it further enacted*, That in all cases where any oath, affirmation or affidavit, shall be made or taken before any Register or Re-

ceiver, or either or both of them, of any local land office in the United States or any Territory thereof, or where any oath, affirmation, or affidavit shall be made or taken before any person authorized by the laws of any State or Territory of the United States to administer oaths or affirmations or take affidavits, and such oaths, affirmations, or affidavits, are made, used, or filed, in any of said local land offices, or in the General Land Office, as well in cases arising under any or either of the orders, regulations, or instructions, concerning any of the public lands of the United States, issued by the Commissioner of the General Land Office, or other proper officer of the Government of the United States, as under the laws of the United States, in any wise relating to or affecting any right, claim, or title, or any contest therefor, to any of the public lands of the United States, and any person or persons shall, taking such oath, affirmation or affidavit, knowingly, wilfully, or corruptly swear or affirm falsely, the same shall be deemed and taken to be perjury, and the person or persons guilty thereof shall, upon conviction, be liable to the punishment prescribed for that offence by the laws of the United States.

Approved, March 3, 1857.

No. 327½.—An Act for the admission of the State of Minnesota into the Union.

Whereas an Act of Congress was passed February twenty-six, eighteen hundred and fifty-seven, entitled "An act to authorize the people of the Territory of Minnesota to form a Constitution and State Government preparatory to their admission into the Union on an equal footing with the original States;" and whereas the people of said Territory did, on the twenty-ninth day of August, eighteen hundred and fifty-seven, by delegates elected for that purpose, form for themselves a constitution and State Government, which is republican in form, and was ratified and adopted by the people, at an election held on the thirteenth day of October, eighteen hundred and fifty-seven for that purpose : therefore

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the State of Minnesota shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original States in all respects whatever.

SEC. 2. *And be it further enacted,* That said State shall be entitled to two representatives in Congress until the next apportionment of representatives amongst the several States.

SEC. 3. *And be it further enacted,* That from and after the admission of the State of Minnesota, as hereinbefore provided, all the laws of the United States which are not locally inapplicable shall have the same force and effect within that State as in other States of the Union; and the said State is hereby constituted a judicial district of the United States, within which a district court, with the like powers and jurisdiction as the district court of the United States for the district of Iowa, shall be established; the judge, attorney, and marshal of the United States for the said district of Minnesota shall reside within the same, and shall be entitled to the same compensation as the judge, attorney, and marshal of the district of Iowa; and in all cases of appeal or writ of error heretofore prosecuted and now pending in the supreme court of the United States, upon any record from the supreme court of Minnesota Territory, the mandate of execution or order of further proceedings shall be directed by the supreme court of

the United States to the district court of the United States for the district of Minnesota, or to the supreme court of the State of Minnesota, as the nature of such appeal or writ of error may require; and each of those courts shall be the successor of the supreme court of Minnesota Territory, as to all such cases, with full power to hear and determine the same, and to award mesne or final process therein.

Approved, May 11, 1858.

No. 337 $\frac{1}{2}$.—An Act to authorize the President of the United States, in conjunction with the State of Texas, to run and mark the boundary lines between the territories of the United States and the State of Texas.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States be, and he hereby is, authorized and empowered to appoint a suitable person or persons, who, in conjunction with such person or persons as may be appointed by and on behalf of the State of Texas for the same purpose, shall run and mark the boundary lines between the Territories of the United States and the State of Texas: Beginning at the point where the one hundredth degree of longitude west from Greenwich crosses Red River, and running thence north to the point where said one hundredth degree of longitude intersects the parallel of thirty-six degrees thirty minutes north latitude; and thence west with the said parallel of thirty-six degrees and thirty minutes north latitude to the point where it intersects the one hundred and third degree of longitude west from Greenwich; and thence south with the said one hundred and third degree of longitude to the thirty-second parallel of north latitude; and thence west with the said thirty-second degree of north latitude to the Rio Grande.

SEC. 2. *And be it further enacted,* That such landmarks shall be established at the said point of beginning on Red River, and at the other corners, and on the said several lines of said boundary, as may be agreed on by the President of the United States, or those acting under his authority, and the said State of Texas, or those acting under its authority.

SEC. 3. *And be it further enacted,* That the sum of eighty thousand dollars, or so much thereof as may be necessary, be, and the same hereby is, appropriated, out of any money in the treasury not otherwise appropriated, to carry out the provisions of this Act: *Provided,* That the person or persons appointed and employed on the part and behalf of Texas are to be paid by the said State: *Provided further,* That no persons, except a superintendent or commissioner, shall be appointed or employed in this service by the United States but such as are required to make the necessary observations and surveys to ascertain such line and erect suitable monuments thereon and make return of the same.

Approved, June 5, 1858.

No. 360 $\frac{1}{2}$.—An Act to protect the timber growing upon lands of the United States reserved for military and other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That if any person or persons shall unlawfully cut, or aid, assist, or be employed in unlawfully cutting, or shall wantonly destroy, or procure to be wantonly destroyed, any tim-

ber standing, growing, or being upon any lands of the United States, which in pursuance of any law passed, or hereafter to be passed, have been, or shall be, reserved or purchased by the United States, for military or other purposes, every such person or persons so offending, on conviction thereof before a court having competent jurisdiction, shall, for every such offence, pay a fine not exceeding five hundred dollars, and shall be imprisoned not exceeding twelve months.

Approved, March 3, 1859.

No. 706.—Extracts from the decision of the supreme court of Michigan, in the Ontonagon town site case.

Appeal of Daniel R. Cash and others from the decision of the district judge of the Upper Peninsula, awarding certain lands to Henry Selby, in Ontonagon.

CAMPBELL, J.—The District Judge of the Upper Peninsula, on the 28th day of November, 1856, received a patent for lots 1, 2, 3, 4, 5 and 6, of section 25, and lot 1, in section 36, in township 52 north, of range 40, west, in Ontonagon county, in trust for the several use and benefit of the occupants thereof, according to their respective interests. This purported to be granted under the provisions of an Act of Congress, approved May 23, 1844, entitled “An act for the relief of citizens of towns upon the lands of the United States, under certain circumstances.” Lots 1, 2 and 3, in section 25, lie on the east side of Ontonagon River, and extend from its mouth to section 36. Lot 4, in section 25, is an island in the river, near its mouth. Lots 5 and 6, in section 25, are west of the river. Lot 1, in section 36, is on the east side of the river.

In pursuance of an act of the legislature of this State, entitled “An act to authorize the District Judge of the Upper Peninsula to hold and convey lands included in the town site of the village of Ontonagon,” approved January 29, 1853, the district judge having obtained the patent, proceeded to act, and awarded lot 6, in section 25, to Henry Selby. Daniel S. Cash and Isaac C. Spalding, severally opposed Selby’s claim, and severally appealed from its allowance.

An objection is made against the right of either Cash or Spalding to appeal from the decision of the trustee, based upon an alleged want of interest.

The consideration of the question renders it necessary to look into the legislation on this subject, to ascertain what rights are provided for and protected under the laws applicable to the subject.

By the pre-emption laws of 1841, no pre-emption could be made by any individual of any sections or fractions of sections included within the limits of any incorporated town, or which had been selected as the site for a city or town, or any parcel of land actually settled and occupied for the purposes of trade and not agriculture. And by the Act of 1844, above referred to, it is provided as follows: (see No. 79.)

As the Indian title to the lands in question was not extinguished until 1842, none of the previous retrospective acts are applicable. The authority of the district judge to act as trustee was not brought in question on the argument, and we shall not, therefore, inquire into it for the purposes of this investigation.

In order to understand fully the meaning of the Act of 1844, it becomes necessary to examine for a moment into the rights in land as existing before that.

Agricultural pre-emptions were permitted, under very stringent provisions confining the settlers to a *bona fide* occupation for agriculture alone. The lands in the excepted list were for reasons of public policy taken from the power of the agricultural settler, but no one else was, by the law of 1841, authorized to enter them, and under that law they still remain public property, subject to the action of Congress.

Individual rights were not recognized. The only authority in any one to enter such property existed in counties, which were authorized, by an Act of 1824, to select one hundred and sixty acres for a county site. (4 Stats. at Large, p. 50.)

Inasmuch as until the law of 1844 was passed, no other right could intervene, it is necessary to see how an agricultural pre-emptioner could ascertain whether the property was subject to his entry or not; for, if not otherwise appropriated, he would clearly have a right to select it and improve it as agricultural land. If covered by an incorporated town, he would have notice of that, for no town ever becomes incorporated without inhabitants, and if such a thing were imaginable, he would still have notice, for no town could become incorporated unless by proceedings under the public laws. If actually occupied for trading purposes, there would be the same visible notice. But if any selection could exist not based upon occupancy, no such notice could be easily obtained, for inasmuch as the law does not provide how or by whom such selection may be made, and gave no rights to any one under it, the agricultural pre-emptioner would not know where to look for information. But there are very serious difficulties in the way of allowing any *selection* by individuals, beyond their actual occupancy. The pre-emption law requires, whether the pre-emption be made by one or two persons jointly, that the applicants shall make oath that the lands were settled upon and improved in good faith, to be appropriated to the exclusive use or benefit of the applicant, and not for purposes of speculation; and that no contract exists, directly or indirectly, with any other person for a beneficial interest in it. It would be a singular construction to hold that an agricultural or other settler could waive these plain provisions, and claim a better right where he professedly enters land for speculation, and with the intention of selling it to others, than where he in good faith observes the law. To hold that an agriculturist can be displaced for another individual who may hold the entire tract for private purposes, would be to defeat the plain language of the statute. And until the law of 1844 was passed, there could be no pretence whatever in favor of any private claims of an exclusive right. The law gave rights to no one.

The language of the Act of 1844 is confined to lands actually settled and occupied. It has no reference to "selected" lands, unless the selection is included in the other language. The words "settle" and "occupy," do not first occur in this Act—they are to be found in all the pre-emption laws.—See Brightly's Digest, p. 469, *et seq.*, where the various acts are collected. They are inapplicable to any other state of things than a *bona fide* use and improvement of the land. And not only is the land to be entered by the county judges required to be "*settled upon and occupied as a town site*," but the specific trust is confided to the use and benefit of the occupants. It is claimed for the appellee, in this case, that one person may select one hundred and sixty acres, or two persons three hundred and twenty acres, as a town site, and so appropriate the whole against all comers, and that the law protects them in such selection, and that the entry by the judges will enure to their benefit. But, if this is so, the language of the act is not well chosen to convey the idea. Settlement and occupancy are not such terms as convey this meaning; and the term "occupants," which

embraces naturally all of a class, cannot be confined to mean a small number, or an individual who may not be an occupant, in fact, at all. But a fatal objection to such a theory is to be found in the fact that the law does not compel the county judge to enter the lands at all; and not only provides no means of securing the property if they refuse to act, but removes the right of pre-emption entirely, unless exercised before the public land sales.

It is impossible to harmonize such a law with any such rights as are set up beyond rights of occupancy. The decision of Secretary Thompson upon the application of the county judges to enter certain lands laid out at Superior City, contains so clear an exposition of the law that we refer to this part of his opinion at length. He says: (see No. 493.)

* * * * *

While the entry is only allowed to cover such land as is actually occupied by the settlers, it must nevertheless be made according to the Government subdivisions, as the law does not permit these to be broken in upon. Thus, in most cases, some land would be found in each subdivision not actually built upon or otherwise occupied for town purposes. These lands the act clearly contemplates shall be sold, and the proceeds are to be disposed of under regulations to be adopted by the State legislatures, who are to establish rules and regulations for the whole execution of the trust.

* * * * *

It is claimed on behalf of Mr. Selby that neither of these contestants has any standing in court. Mr. Cash does not claim to have occupied the land as a trader, or as the inhabitant of a town, and his occupancy would not therefore come within the Act of Congress. And if any portion of the subdivision had been occupied legitimately for town purposes in advance of him, he certainly could not prevail in an agricultural pre-emption.

But the law did not authorize the judge to enter any subdivision not settled and occupied as a town, and if this was not thus occupied it was not withdrawn from private pre-emption. Any person claiming such pre-emption must have the right to oppose conflicting claimants. If an unauthorized grant has been made of land to which he sets up a claim, we think it is his right to appear before any special tribunal undertaking to deal with the lands, to oppose any disposition of them calculated to create new rights and increase the difficulties of defending himself. If the land was not legitimately entered by the trustee, it should not be disposed of to the prejudice of any just claimant. We express no opinion upon the validity of Mr. Cash's claim, but we think the nature of it sufficient to give him a standing in court.

The views we have already expressed, are decisive of the right of Spaulding. While the Act of Congress leaves the details of the use of the proceeds of the surplus fund to be regulated by the legislature, it is very clear that the law designed that they should be used for the common benefit in some way. Many ways exist by which this end might be attained.

In the absence of any legal representative, at least, we think any one interested had a perfect right to appear and protect the common fund.

Having a right to appear, are the objections raised, such as to entitle them to a reversal of the action of the trustee?

* * * * *

CHRISTIANCY, J., concurred.

MANNING, J., delivered an opinion, coinciding with that of Judge Campbell in the main question, but holding that Cash had no right to appear in the case, or to appeal.

MARTIN, Ch. J., did not sit in the case.

ATTORNEY-GENERAL'S OFFICE,
March 15, 1860.

Sir:—I have examined the papers which accompanied your letter of February 25th, in relation to the survey of a private land claim in California, known as the "Arroyo Chico."

The survey was made after a final decree of confirmation, and was approved by the Surveyor-General of California, but before it was transmitted to the General Land Office, several persons who claimed an interest in the land, prepared a petition setting forth their objections, and praying that an order might be issued by the District Court to the Surveyor-General, requiring him to bring the survey into court, and that such other proceedings might be then and there had as would be just and equitable. Accordingly, on motion of the District Attorney, the survey was brought before the court, and the parties to the petition appeared by their attorney and presented their affidavits; some of these were in the nature of petitions setting forth the title under which the petitioners claimed, and concluding with a prayer that they be allowed to appear and contest the survey. After hearing their affidavits, the court rejected their application. The District Attorney declined to offer any objections in behalf of the Government to the survey, and it was accordingly approved. The petitioners have presented to you the same proofs which they exhibited to the court, and have entitled their application an "appeal from the District Court for the northern district of California." This is precisely what it is; but such an appeal from a court to an executive department cannot be entertained.

The question which you propose is, whether the decree of approval entered on the records of the District Court, precludes an examination of the survey, or review of the Surveyor-General's decision in your Department. This depends upon the question, whether the court had jurisdiction over the matter; for if it had, it is very clear that the decree is final and conclusive.

In the case of *The United States v. Fossat*, 21 Howard, 445, it was held, the jurisdiction of the District Court over a private land claim extends to questions relating to its location and boundaries, and does not terminate until the issue of a patent. I am of opinion therefore, that the decree of the District Court confirming the survey, after all objection on behalf of the United States had been waived by the District Attorney, ought to be regarded as final, and that a patent should be issued accordingly.*

Yours, very respectfully,

J. S. BLACK.

Hon. Jacob Thompson, Secretary of the Interior.

* It was decided on the 19th March, 1860, that a patent should issue in accordance with the foregoing opinion.

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